

# Qualified Intermediary Regime



The Internal Revenue Service (IRS) and the US Treasury launched the Qualified Intermediary (QI) regime back in 2000. The regime evolved several times. In more recent years, the QI regime was revamped to ensure coordination between the FATCA and QI regimes, and to upgrade the QSL regime to the QDD regime. The latest version of the QI Agreement (QIA) became effective on 1 January 2023 (Revenue Procedure 2022-43 or the 2023 QIA) and introduced complex rules relating to payments from publicly traded partnerships (PTP) as well as additional certification requirements.

## An agreement that comes with benefits... and periodic certification obligations

US rules relating to certain US-source income (so called "FDAP income") apply, regardless of whether an intermediary recipient is a QI or not. For example, any non-US bank offering securities accounts to its clients has US reporting and, in most cases, withholding obligations regarding securities generating US source dividends or interest. Regarding account holders of the bank qualifying for a treaty reduction of the standard 30% US withholding rate, specific nominative processes must be followed to obtain the treaty benefits they are entitled to.

One of the important advantages for a bank entering into a QIA (and for the securities account holders of the bank) is that the bank becomes a withholding agent for US withholding and reporting, and can ensure that pools of its account holders (e.g. the pool of Belgian resident individuals qualifying for reduced withholding rates under the Belgian-US double taxation treaty) obtain these reduced treaty rates on their US FDAP income generated through their securities account held with the bank.

Outsourcing a QI periodic review to an external reviewer gives the QI the opportunity to remediate possible deficiencies before the certification, while a Health Check is an ideal tool for managing the risk of poor or non-compliance in advance of the year of periodic certification.

Compliance and reporting obligations for the bank (and possibly direct US withholding and withholding payment obligations for those banks acting as primary intermediary) apply, however treaty eligible beneficiaries within this pool do not need to be disclosed to the IRS.

As a counterpart, the QIA imposes a.o. certain documentation and reporting obligations, and (if a QI elects to be a primary withholding agent) to deposit tax to US Treasury, or (if a QI is a secondary withholding agent) to instruct a US withholding agent to make such deposits. A QI must also conduct a periodic review (through an independent, internal or external reviewer) once every 3 years to verify whether all its obligations are met under the QIA and issue a periodic certification to the IRS.

Not only banks but also certain partnerships (including e.g. certain private equity funds) can enter into an agreement similar to the QIA to achieve similar benefits for their investors.

Becoming a QI is a choice. The alternative is being a Non-Qualified Intermediary (NQI), where the upstream withholding agents will be in control of the US withholding at source instead. NQIs can access tax relief at source as well; however subject to full disclosure of their customers to another QI or US withholding agent. Additionally, NQIs are always subject to reporting at beneficial owner level, while QIs can benefit from certain pooled reporting obligations.

In practice, most private and retail banks offering securities accounts signed a QIA, given the commercial advantage towards their securities account holders, facilitating treaty access on their behalf.

## Next certification – The time is now to consider your QI Review!



Many QI's will need to select their next year of review within the 2021-2023 period.

The periodic certification would be due by 1 July 2024 if 2021 or 2022 were selected as year of review, respectively by 31 December 2024 if 2023 were selected as year of review.

To be noted that if 2023 were selected, the complex PTP rules may also be subject to review regarding the first year they are in effect.

## How can we help – Our QI services

### QI Review

We can assist with the periodic QI Review, in line with the IRS requirements laid down in the QIA and its relevant Appendixes.

Our teams are flexible to work remotely, through secured data rooms or within the premises of our clients.

As a result, we deliver:

- The comprehensive QI Review report
- A summary presentation, with an aim of assisting the Responsible Officer with the certification process

### Health checks and remediation

Our teams can assist with health checks to provide assurance that a QI meets its obligations under the QIA.

The scope of the health check can include all or several of the below:

- Review of QI procedures, processes, compliance programs and training materials
- Testing of the operating effectiveness of the procedures and processes in place, including their interactions with FATCA (and CRS) processes, and testing of samples of accounts on compliance with QI documentary, reporting and withholding obligations, review and/or testing of IT system specifications
- Awareness interviews of key personnel to assess required knowledge

As a result, we deliver:

- A comprehensive report containing a remediation plan
- Further remediation assistance where needed

### QI implementation assistance

For institutions considering entering a QIA, we can provide full scope assistance, including:

- Strategic considerations as to e.g. primary versus secondary withholding agent, consolidated compliance program, the QDD regime, the PTP options
- Application for QI status through the QI portal
- Implementation of (consolidated) compliance program, including procedures, policies, training program

### Training modules

Our teams can deliver training modules, tailored to the public to be trained, and matters to be covered.

### QI advice

We can provide advice to QI's on the application of the QIA, including in respect of more complex matters such as the QDD regime and PTP obligations. Such assistance can be provided under the form of dedicated ad hoc advice or through an ongoing hotline arrangement.

### Assistance with ongoing QI compliance

We can assist QI's with their compliance obligations under the QIA, through preparation or review assistance.

## Need advice or review? Contact our experts



**Jean-Nicolas BOURTEMBOURG**

Partner, Head of Tax & Transfer Pricing

T +352 45 38 78 348

M +352 691 453 819

E [jean-nicolas.bourtembourg@lu.gt.com](mailto:jean-nicolas.bourtembourg@lu.gt.com)



**Alain VERBEKEN**

Director, Tax – Financial Services

T +352 45 38 78 335

M +352 621 613 119

E [alain.verbeken@lu.gt.com](mailto:alain.verbeken@lu.gt.com)



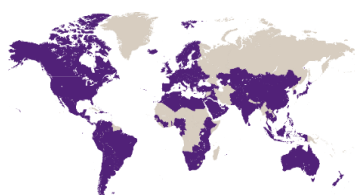
**Aliaksei CHERNIKAU**

Senior Manager, Tax – Financial Services

T +352 45 38 78 360

M +352 621 284 203

E [aliaksei.chernikau@lu.gt.com](mailto:aliaksei.chernikau@lu.gt.com)



**Grant Thornton**

### About Grant Thornton

Grant Thornton is one of the world's leading organisations of independent assurance, tax and advisory firms. These firms help dynamic organisations unlock their potential for growth by providing meaningful, forward looking advice. More than 73,000 people across over 150 countries, are focused on making a difference to clients, colleagues and the communities in which we live and work.

© 2024 Grant Thornton Luxembourg. All rights reserved.

"Grant Thornton" refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton Luxembourg is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.