

ClientAlert

Tax

July 2013

Treasury Delays Implementation of Certain Aspects of FATCA for Six Months



On July 12, 2013, the Internal Revenue Service (the "IRS") released an advance copy of Notice 2013-43 (the "Notice"), which extends the timeline for the implementation of withholding, registration and due diligence obligations under the Foreign Account Tax Compliance Act ("FATCA"). The US Department of the Treasury (the "Treasury") is currently engaged in discussions with more than 80 countries regarding the implementation of intergovernmental agreements (such an agreement, an "IGA"), and the purpose of the Notice is to allow sufficient time for the implementation of those IGAs. The principal issues addressed by the Notice are summarized below.

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Revision to Grandfathering Date and Withholding Commencement Date

The Notice announces a six-month delay for the effective date of certain withholding requirements under FATCA and a six-month extension of the cut-off date for "grandfathered" obligations (or obligations that are not subject to FATCA withholding). Withholding on certain US source payments (including, but not limited to, payments of US source dividends and interest) under FATCA will begin on **July 1, 2014**, and the definition of a **grandfathered obligation** is expanded to include obligations issued on or before **June 30, 2014**. The Notice does not delay the January 1, 2017 effective date for withholding on payments of gross proceeds or "passthru" payments.

Extension of Time to Register

The Notice also contains additional information on the FATCA registration website and the FATCA registration process. The IRS projects that the FATCA registration website will be accessible to foreign financial institutions ("FFIs") beginning on August 19, 2013. During the period beginning with the opening of the FATCA registration website through December 31, 2013, an FFI will be able to create an account and edit information associated with its account. The IRS expects to issue Global Intermediary Identification Numbers ("GIINs") as FFIs finalize their registrations in 2014. The IRS will post the first list of FFIs that have registered with the IRS by June 2, 2014, and will update the list on a monthly basis thereafter. To ensure inclusion on that list, an FFI must finalize its registration by April 25, 2014.

Favorable Treatment for FFIs Operating in a Jurisdiction That Has Signed an IGA

The Notice also provides guidance for FFIs operating in jurisdictions that have signed an IGA with the United States to implement FATCA. A jurisdiction will be treated as having an IGA in effect if the jurisdiction is listed on the Treasury website as a jurisdiction believed to have an IGA in effect. The website (<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>) maintained by the Treasury that lists the jurisdictions treated as having an IGA in effect is intended to include jurisdictions that have signed but have not yet brought into force an IGA. An FFI that is in operation in a jurisdiction treated as having an IGA in effect will be permitted to register on the FATCA registration website as a registered deemed-compliant FFI or a participating FFI, as applicable.

Relaxation of Deadlines for Account Opening Procedures

The Notice also extends the deadline for implementing new account-opening procedures, reporting with respect to US accounts and performing due diligence on pre-existing obligations. The IRS and the Treasury intend to revise the Treasury regulations relating to FATCA to reflect the changes discussed in the Notice. The Treasury has also released updated model IGAs that reflect the changes discussed in the Notice.

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