

Akerman Practice Update

TAXATION

July 2011

Guidance Outlining Phased Implementation of FATCA Beginning in 2013

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The Foreign Account Tax Compliance Act ("FATCA") was enacted in 2010 as part of the Hiring Incentives to Restore Employment ("HIRE Act"). FATCA targets non-compliant U.S. taxpayers with foreign accounts. It also requires foreign financial institutions ("FFIs") to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.

The Treasury Department and the Internal Revenue Service ("IRS") have received numerous comments concerning the practical difficulties in implementing various aspects of FATCA within the timeframes provided by the HIRE Act and under previous FATCA guidance. The two main challenges identified relate to the time to develop compliance, reporting, and withholding systems necessary to comply with FATCA and the implementing of notices.



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“Under the phased-in implementation approach described in the Notice, FFIs and U.S. withholding agents are given adequate time to build the systems needed to fully comply with FATCA.”

On July 14, 2011, the Treasury Department and the IRS issued Notice 2011-53 (the “Notice”) announcing plans to phase in the requirements to FATCA. Under the phased-in implementation approach described in the Notice, FFIs and U.S. withholding agents are given adequate time to build the systems needed to fully comply with FATCA.

FATCA requires FFIs to report to the IRS information about foreign financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. In order to avoid the withholding requirement under FATCA, a participating FFI will have to enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts, and
- Withhold a 30% tax on certain payments to non-participating FFIs and account holders who are unwilling to provide the required information.

FFIs that do not enter into an agreement with the IRS will be subject to withholding on certain types of payments, including U.S. source interest and dividends, gross proceeds from the disposition of U.S. securities, and pass-through payments.

The Notice provides a timeline for FFIs and U.S. withholding agents to implement the various requirements of FATCA. Specifically, the Notice phases in the implementation of FATCA in the following manner:

1. An FFI must enter an agreement with the IRS by June 30, 2013, to ensure that it will be identified as a participating FFI in sufficient time to allow withholding agents to refrain from withholding beginning on January 1, 2014.
2. Withholding on U.S. source dividends and interest paid to non-participating FFIs will begin on January 1, 2014, and withholding on all withholdable payments (including gross proceeds) will be fully phased in on January 1, 2015.
3. Due diligence requirements for identifying new and pre-existing U.S. accounts (including certain high-risk accounts) will begin in 2013. Reporting will begin in 2014 with reports due on September 30, 2014.
4. For purposes of the Notice, high risk accounts include private banking accounts with balances that are equal to or greater than \$500,000.

The IRS will continue to work closely with businesses and foreign governments to implement FATCA effectively and further guidance is expected. Regulations

“Withholding on U.S. source dividends and interest paid to non-participating FFIs will begin on January 1, 2014, and withholding on all withholdable payments (including gross proceeds) will be fully phased in on January 1, 2015.”

incorporating the guidance provided in the various notices issued and further guidance on implementation may be issued by the IRS by December 31, 2011.

Final Regulations are anticipated to be published in the summer of 2012. In conjunction with these regulations, the IRS also anticipates issuing draft versions followed by final versions of the associated FFI Agreement and reporting forms for use by withholding agents and participating FFIs in the summer of 2012.

For more information please contact a member of our Taxation practice.

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