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TAX AND FINANCIAL SERVICES CLIENT ALERT

U.S. TREASURY/IRS AMEND FATCA RULES AND EXTEND CERTAIN DEADLINES

As we move toward the end of 2012, many non-U.S. financial institutions have been eager for information on how the Foreign Account Tax Compliance Act (FATCA) is going to be implemented. They are the entities which will have major obligations for due diligence and reporting about U.S. account holders, once the law becomes effective.

As of yet, the final regulations have not been published, and while there reportedly is much activity toward bi-lateral inter-governmental agreements (IGAs) between the United States and other countries, only one IGA –that with the United Kingdom – has been signed.

On October 24, 2012, the U.S. Treasury Department and the Internal Revenue Service (IRS) took a step forward to address a number of implementation questions and pushed some deadlines back. Announcement 2012-42, titled “Timelines for Due Diligence and Other Requirements under FATCA,” provides transition relief to foreign financial institutions (FFIs) which must comply with FATCA and increases conformity with the IGA models. These changes modify the proposed rules circulated in February and will be incorporated into the final regulations.

Here is a brief summary of the Announcement. Its full text can be found [here](#) along with an accompanying timetable [here](#).

Account Opening Procedures

Currently, a preexisting obligation means any account maintained or executed by the withholding agent as of January 1, 2013. The Announcement amends the requirements to provide withholding agents, including participating FFIs (PFFIs) and registered-deemed compliant FFIs, with the ability to set up new account opening procedures by January 1, 2014. This will relieve the potential duplicative efforts to verify

an FFI's status as a participating, deemed-compliant or nonparticipating FFI, if withholding agents set up a system by January 1, 2013, only to thereafter have their entity account holders enter into FFI agreements with the IRS.

Due Diligence Requirements

The Announcement mandates that withholding agents, other than PFFIs, must document payees that are prima facie FFIs by June 30, 2014. PFFIs will be required to perform identification procedures and obtain the appropriate documentation to determine whether a prima facie FFI payee is a PFFI, deemed-compliant FFI or nonparticipating FFI within six months after the effective date of its FFI agreement. This means June 30, 2014, for any FFI that enters into an FFI agreement prior to December 31, 2013.

For preexisting obligations, withholding agents, other than PFFIs, will be required to document payees that are entities other than prima facie FFIs by December 31, 2015. A PFFI, with respect to preexisting obligations, will be required to perform identification procedures and obtain appropriate documentation to determine whether an entity, other than a prima facie FFI, is itself a PFFI by the later of December 31, 2015, or two years after the effective date of its FFI agreement.

PFFIs must now perform identification procedures and obtain the appropriate documentation to identify preexisting high value individual accounts by the later of December 31, 2014, or the date that is one year after the effective date of the FFI's FFI agreement. Also, a PFFI must perform identification procedures and obtain the appropriate documentation to preexisting individual accounts (not high value) prior to the later of December 31, 2015, or the date that is two years after the effective date of the respective FFI's agreement with the IRS.

These amendments provide an easier transition for those entities who are implementing uniform due diligence procedures for all of their affiliates. These entities now have an easier administrative burden because the timing is aligned with the potential IGA signing process.

Deadline Extensions

Withholdable payments now include gross proceeds from any sale or other disposition occurring after December 31, 2016, rather than December 31, 2014, as prescribed in the Proposed Rules.

A PFFI will be required to file information reports with respect to the 2013 and 2014 calendar years not later than March 31, 2015. The Proposed Rules had required that calendar year 2013 reports were due September 30, 2014.

Scope of Grandfathered Obligations

Grandfathered obligations will now cover any obligation that produces or could produce a foreign passthru payment and that cannot produce a withholdable payment, provided it is an outstanding obligation six months after final regulations defining the term "foreign passthru payment" are filed with the Federal Register. Grandfathered obligations will also include any instrument that gives rise to a withholdable payment solely because it gives rise to a dividend equivalent pursuant to section 871(m) of the Code, provided that it is outstanding six months after the date on which instruments of its type first become subject to such treatment.

Grandfathered obligations will also include any obligation to make a payment with respect to, or to repay, collateral posted to secure obligations under a notional principal contract that is a grandfathered obligation.

If you have questions, please contact Patton Boggs partners who have been working on FATCA for the last several years -- Don Moorehead (Dmoorehead@PattonBoggs.com) or John Oberdorfer (Joerdorfer@PattonBoggs.com).

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