

FATCA: Guidance Delayed Until “Soon After the New Year”

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On December 15, Internal Revenue Service Commissioner Douglas Shulman announced that new proposed regulations under the Foreign Account Tax Compliance Act ("FATCA") will be released "soon after the new year." The Commissioner indicated that these regulations will provide guidance to address concerns that have been raised regarding the implementation of the requirements under FATCA.

FATCA which was enacted in 2010, targets non-compliant U.S. taxpayers with foreign accounts. Additionally, it requires foreign financial institutions 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. Failure to meet these reporting requirements could result in a 30 percent withholding tax.

Commissioner Shulman stated that in speaking with executives from foreign banks and other financial institutions, the IRS has determined that most of the concerns that have been expressed fall within two categories. The first being the conflict between FATCA and other countries' laws. The second major concern is the difficulty applying the withholding requirements for pass-through payments. The new proposed regulations will seek to address these as well as other implementation concerns that have been brought to the attention of the IRS and the Treasury Department. Commissioner Shulman said that, "the goal of these regulations is to address these concerns and provide a way forward to allow responsible corporate citizens to work through these tricky issues in a practical fashion."

Additionally, Commissioner Shulman discussed the recent offshore investigation and enforcement. He stated that the IRS has had great success with obtaining information from one bank, but that the focus is not on one bank or one country. The Commissioner stated that the two (2) voluntary disclosure programs for reporting previously unreported assets from 2009 through today have brought in 33,000 cases.

We will continue to provide updates on FATCA as it is released in the New Year. For additional discussion guidance on FATCA requirements, please visit our previous Practice Update.

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