

Latham & Watkins Tax Department

Alert 1558 | July 15, 2013

IRS Revises FATCA Timeline

To allow for a more orderly implementation of FATCA, the IRS has issued guidance postponing various deadlines by six months.

Summary

On July 12, 2013, the IRS released Notice 2013-43, which primarily postpones by six months various implementation deadlines set forth in the Treasury regulations under FATCA. With respect to the FATCA internet registration portal to be used by foreign financial institutions to register with the IRS, the Notice provides it is projected to be accessible on August 19, 2013, rather than July 15 as initially anticipated. In addition, the Notice provides a presumption rule regarding whether intergovernmental agreements (IGAs) under FATCA should be deemed effective. Finally, the Notice states that the IRS will amend both the Treasury regulations and IGAs to incorporate the provisions of the Notice, and taxpayers may rely on the Notice prior to such amendments.¹

This *Client Alert* summarizes the [Notice](#).

Background

FATCA was enacted as part of the Hiring Incentives to Restore Employment Act of 2010 to uncover US persons who may be evading US taxes by investing through non-US financial institutions or other non-US entities. To accomplish this goal, FATCA creates a new information reporting and withholding regime, in addition to existing US information reporting and withholding rules. Although the FATCA legislation is generally effective beginning January 1, 2013, the Regulations phase in the implementation of FATCA over the next several years.

FATCA Implementation Dates

The Notice alters the original implementation timeline for FATCA set forth in the Regulations.

Withholding

Under the Regulations, withholding under FATCA on US-source fixed or determinable annual or periodic income (e.g., US-source dividends and interest) generally was to begin on January 1, 2014. Under the Notice, that date has been extended until July 1, 2014. However, the Notice does not affect the timeline set forth in the Regulations for withholding on gross proceeds, passthru payments and certain offshore payments.

Grandfathered Obligations

Under the Regulations, certain obligations (and associated collateral) outstanding on January 1, 2014 are considered grandfathered obligations. Under the Notice, that date has been extended until July 1, 2014. Payments with respect to, and the gross proceeds from the sale of, a grandfathered obligation generally are not subject to withholding under FATCA.

Account Opening Procedures

Under the Regulations, withholding agents were generally required to implement new account opening procedures beginning January 1, 2014. Under the Notice, that date has been extended until July 1, 2014. In the case of a PFFI — defined as a foreign financial institution (an FFI) that is participating as a result of it entering into an agreement (an FFI Agreement) with the IRS whereby the FFI agrees to adhere to the requirements of FATCA — the date has been extended under the Notice until the later of July 1, 2014 or the effective date of its FFI Agreement. Accordingly, under the Notice, a preexisting obligation (*i.e.*, an obligation maintained, executed or issued by the withholding agent in respect of which the withholding agent may be required to perform certain due diligence) is:

- With respect to a withholding agent that is not a PFFI or registered deemed-compliant FFI (*e.g.*, a registered FFI located in a Model 1 IGA county), one that is outstanding on June 30, 2014;
- With respect to a withholding agent that is a PFFI, one that is outstanding on the effective date of the PFFI's FFI Agreement; and
- With respect to a withholding agent that is a registered deemed-complaint FFI, one that is outstanding prior to the later of July 1, 2014 or the date on which such FFI receives its Global Intermediary Identification Number (GIIN) as a result of registering with the IRS.

In addition, the Notice provides for a similar change to IGAs. The Notice states that the term “Preexisting Account” found in IGAs will be globally modified to mean a financial account maintained as of June 30, 2014.

Due Diligence on Preexisting Obligations

The Notice states that an FFI Agreement entered into by a PFFI which receives its GIIN on or prior to June 30, 2014 will have an effective date of June 30, 2014. In addition, the various due diligence requirement deadlines for preexisting obligations of withholding agents generally have been extended by six months under the Notice from those found in the Regulations.

The Notice provides for a similar automatic six-month delay in the due diligence requirements found in all IGAs.

Information Reporting

Under the Regulations, a PFFI was to report no later than March 31, 2015 certain information on US accounts held at the PFFI during calendar years 2013 and 2014. The Notice provides that such information reporting will only cover accounts held during the 2014 calendar year.

The Notice further provides that this change in information reporting will apply to an FFI located in a country that has entered into an IGA.

Portal Registration

The preamble to the Regulations states that the internet FATCA registration portal (the Portal), through which an FFI will register to receive its GIIN and, if necessary, enter into an FFI Agreement, was to be operational no later than July 15, 2013. The Notice states that the Portal is now projected to be accessible on August 19, 2013. However, although information entered in the Portal prior to January 1, 2014 will be stored on the Portal and will be accessible to FFIs to make changes, the information can be submitted as final only on or after January 1, 2014. This allows FFIs to use the remainder of 2013 to become familiar with the Portal's registration process, and to input and refine their information.

In addition, the preamble to the Regulations states that, provided a PFFI or registered deemed-compliant FFI registered no later than October 15, 2013, it would be included on the first FFI list to be published by the IRS on December 2, 2013. The Notice extends the publication date for such first FFI list until June 2, 2014, and states that the FFI list will be updated monthly thereafter. To ensure inclusion on the June 2, 2014 FFI list, an FFI will need to register by April 25, 2014.

The Regulations generally provide that a withholding agent may treat a payment as made to a PFFI or registered deemed-compliant FFI only if the withholding agent receives the required documentation with a GIIN, and such GIIN can be found on the IRS's FFI list. The Notice provides, however, that with respect to a payee that is a reporting FFI located in a country that has a Model 1 IGA, the GIIN verification requirement by the payor will begin on January 1, 2015, thereby giving such a payee additional time to ensure that it appears on the IRS's FFI list by January 1, 2015.

Chapter 3 Documentation

Under the Notice, all withholding certificates (*e.g.*, W-8BENs) and documentary evidence used for purposes of chapter 3 of the Code (*i.e.*, existing withholding procedures) that would otherwise expire on December 31, 2013 will expire instead on June 30, 2014, unless there is a change in circumstance that makes the withholding certificate or documentary evidence incorrect or unreliable.

QI, WP and WT Agreements

Under the Notice, all qualified intermediary, withholding foreign partnership and withholding foreign trust agreements that would otherwise expire on December 31, 2013 are automatically extended until June 30, 2014.

Foreign-Targeted Registered Obligations

Notice 2012-20, which the IRS previously issued in March 2012, allowed a withholding agent paying interest to apply the foreign-targeted registration obligation rules under Treasury regulations section 1.871-14(e) (providing for a simplified certification procedure if the registered owner of the obligation is a financial institution meeting certain requirements) for obligations in registered form issued after the enactment of FATCA but prior to January 1, 2014. The Notice extends the termination date of this transition period until July 1, 2014.

Intergovernmental Agreements

To offer some certainty regarding the effectiveness of an IGA, the Notice states that the IRS intends to treat all signed IGAs as effective, regardless of whether the IGA has been brought into force. Treasury will maintain a website of such deemed effective IGAs at: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>. An FFI in a country that has a deemed effective IGA may register using the Portal. However, an IGA will be removed from this deemed effective list if the IGA country fails to implement the IGA within a reasonable amount of time. If an IGA is removed from the list

of deemed effective IGAs, an FFI located in that IGA country will be required to update its status accordingly in the Portal.

Conclusion

The Notice should represent welcome relief on some aspects of the FATCA implementation timeline to stakeholders.

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Endnote

¹ For information regarding the Regulations, see Latham & Watkins [Client Alert Number 1460, "IRS Releases Final FATCA Regulations," January 29, 2013](#).