
IRS Extends Timelines Under FATCA and Provides Further Guidance With Regards to Intergovernmental Agreements

2013-07-15

On July 12, 2013, the Internal Revenue Service (IRS) issued [Notice 2013-43](#) (the Notice), which modifies the timelines for the implementation of certain requirements under Sections 1471 through 1474 of the Internal Revenue Code (commonly referred to as the Foreign Account Tax Compliance Act or FATCA). The Notice also provides additional guidance regarding the treatment of financial institutions located in jurisdictions that have signed intergovernmental agreements (IGAs) for the implementation of FATCA that are not yet in force. The Department of the Treasury and the IRS intend to amend the final regulations issued under FATCA to adopt these rules; prior to such amendments, taxpayers may rely on the provisions of the Notice.

Background – FATCA in General

FATCA, enacted in March 2010 in order to prevent US taxpayers from evading US tax through the inappropriate and/or undisclosed use of offshore accounts, generally imposes a 30% withholding tax on any “withholdable payment” made to “foreign financial institutions” (FFIs) and non-financial foreign entities (NFFEs), unless the recipient of the payment complies with certain requirements or qualifies for an exception. A “withholdable payment” includes: (i) any payment of interest, dividends or other “fixed or determinable annual or periodical” income from sources within the United States (US FDAP) and (ii) any gross proceeds from the sale or other disposition of any property that can produce interest or dividends from US sources.

Generally, to avoid the 30% withholding tax, an FFI will be required to enter into an agreement with the IRS (FFI Agreement). By entering into an FFI Agreement, an FFI agrees to undertake certain due diligence to identify its “United States accounts,” to comply with certain information reporting and withholding obligations with respect to its accounts, and, in some cases, to close or transfer accounts with respect to which reporting or withholding is not permitted. An FFI that enters into an FFI Agreement is considered a “participating FFI.”

Important Changes Made by the Notice

The Notice makes important changes in several aspects of FATCA.

1. Extension of Timeline for Withholding

The Notice generally defers withholding on withholdable payments made to FFIs and NFFEs. Thus, withholding on withholdable payments will only be required on payments made after June 30, 2014. The Notice does not extend the date for which withholding on gross proceeds must begin.

2. Revision of the Definition of Grandfathered Obligation

Under the final regulations, any payment made under an “obligation” (as defined in the FATCA regulations), and any proceeds from the disposition of an obligation, will not be subject to FATCA withholding. The Notice extends that date to July 1, 2014.

3. Extension of Timeline for Implementing New Account Opening Procedures

FATCA requires withholding agents (including participating FFIs) to implement account opening procedures designed to identify US accounts. The Notice delays the required implementation of these procedures to July 1, 2014 (or, in the case of a participating FFI, the effective date of its FFI Agreement).

4. Modification of Timelines for Completing Due Diligence on Preexisting Accounts

FATCA requires withholding agents (including participating FFIs) to complete certain due diligence requirements with respect to preexisting accounts, including documenting the status of entities owning such accounts, and identifying US accounts. The Notice modifies the timelines for completing due diligence on preexisting accounts by postponing the deadline for completion of such diligence by six months.

5. Reporting

Currently, the final regulations require that a participating FFI file its first information report on its US accounts for the 2013 and 2014 calendar years no later than March 31, 2015. The Notice modifies this rule to require only that the first report cover information with respect to the 2014 calendar year.

6. Extension of Timeline for Registration with the IRS

Under FATCA, FFIs are required to register and certify their FATCA status via the IRS registration portal. The Notice extends the date for registration by six months and notes that the registration portal is expected to be operational by August 19, 2013.

7. Treatment of Financial Institutions in Jurisdictions with IGAs That are Signed, but Not Currently in Force

The Notice provides that a jurisdiction will be treated as having an IGA that is in effect if such jurisdiction is **listed on the Treasury website as a jurisdiction treated as having an IGA in effect**. The Notice states that the list generally will include jurisdictions that have signed an IGA, even if the IGA has not yet been brought into force.

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any US tax advice

contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Authors



**Richard E.
Andersen**

RETIRED PARTNER

☎ +1 212 230 8800