IRS Extends FATCA Deadlines

The Foreign Account Tax Compliance Act ("FATCA"), enacted as part of the Hiring Incentives to Restore Employment ("HIRE") Act in March 2010, is designed to police offshore investments, accounts and trust interests held by certain U.S. persons. Under FATCA, foreign financial institutions ("FFIs") are required to enter into an agreement with the U.S. Treasury to (a) identify, through established due diligence procedures, any financial account held by specified U.S. taxpayers or U.S.-owned foreign entities ("U.S. accounts"), (b) report information about each U.S. account, and (c) withhold taxes on certain payments made to account owners that fail to submit information to the FFI and non-participating FFIs (*i.e.*, FFIs that do not enter into an agreement with the U.S. Treasury). FFIs that fail to enter into such an agreement are subject to a 30% U.S. withholding tax on U.S.-source interest, dividends, rents, salaries and similar (fixed and determinable annual or periodical) payments, as well as on gross proceeds from the sale or other disposition of property that can produce U.S.-source interest or dividends. For more details on FATCA, see our Client Alert, published on April 14, 2011, "IRS Publishes FATCA Guidance."

FATCA was originally set to go into effect on January 1, 2013. The Internal Revenue Service has now issued Notice 2011-53, which extends this deadline and phases in FATCA over time, as follows:

- Withholding on U.S.-source, fixed and determinable annual or periodical payments (such as interest and dividends) made to non-participating FFIs now will go into effect on January 1, 2014 (a one-year extension). Withholding on all other types of withholdable payments made to non-participating FFIs (such as gross proceeds from the sale of property that can produce U.S.-source interest or dividends) will now go into effect on January 1, 2015.
- FFIs that enter into an agreement with the U.S. Treasury by June 30, 2013, are guaranteed that they will not be subject to withholding on payments made to them when the above-described withholding goes into effect on January 1, 2014. FFIs that enter into an agreement with the U.S. Treasury after that date (and before December 31, 2013), although technically compliant with FATCA, may nevertheless be subject to withholding during 2014 in certain situations due to the lack of sufficient notice to U.S. withholding agents regarding their compliance status. As such, all FFIs are well-advised to enter into an agreement with the U.S. Treasury no later than June 30, 2013.
- The deadline for implementing due diligence procedures to identify U.S. accounts depends partly on the effective date of the FFI's agreement with the U.S. Treasury (the "Agreement Effective Date"). For all FFIs entering into an agreement with the U.S. Treasury on or before June 30, 2013, the Agreement Effective Date is July 1, 2013. For all other FFIs, the Agreement Effective Date is the date the FFI actually enters into an agreement with the U.S. Treasury. For new accounts opened after the Agreement Effective Date, the FFI must already have due diligence procedures in place for identifying U.S. accounts. For preexisting private bank

accounts[1] containing at least $500,000 on the Agreement Effective Date, the appropriate due diligence procedures must be implemented within one year of the Agreement Effective Date. For preexisting private bank accounts containing less than $500,000 on the Agreement Effective Date, the appropriate due diligence procedures must be implemented within one year of the Agreement Effective Date or by December 31, 2014, whichever is later. For all other accounts, the due diligence procedures must be implemented within two years of the Agreement Effective Date.

- Pursuant to the agreement with the U.S. Treasury, FFIs are required to report certain information regarding U.S. accounts, such as the name, address, and U.S. tax identification number of each U.S. account holder and the account number. The specific reporting requirements will be phased in beginning in 2014.

[1] A private bank account is an account maintained by an FFI's private banking department, which includes, among other things, any department that specifically services "high net-worth" individuals or provides personalized services to individual account holders (such as estate planning and philanthropic services).

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