

IRS Postpones FATCA Implementation

The United States Internal Revenue Service recently issued Notice 2013-43 postponing the implementation of certain provisions of the Foreign Account Tax Compliance Act (FATCA). FATCA is designed to police offshore investments, accounts and trust interests held by certain US persons. The final FATCA regulations, issued in January 2013, set forth a timeline for phasing in FATCA beginning that year. The notice's postponement of certain of these deadlines provides entities subject to the rules with additional time to become FATCA-compliant and delays the dates on which such entities would, if non-compliant, become subject to withholding tax on certain US-source payments.

Overview

As noted in our prior FATCA client alerts, FATCA requires certain foreign financial institutions (FFIs) to enter into an agreement (an FFI Agreement) with the IRS to act as "participating FFIs" by (i) identifying their so-called "US accounts" using established due diligence procedures, (ii) reporting information about their US accounts to the IRS, and (iii) satisfying certain withholding requirements. FFIs that fail to do so may be subject to withholding on "withholdable payments," which include US-source interest, dividends, and other similar fixed and determinable annual or periodical (FDAP) payments, as well as gross proceeds from the sale or other disposition of property that can produce US-source interest or dividends. The final regulations set forth a timeline for implementing these requirements and will be amended to reflect the new dates set forth in the notice.

Since the enactment of FATCA, the US Treasury Department has issued two model intergovernmental agreements (IGAs), which, in certain cases, provide FFIs in jurisdictions that enter into such agreements with alternative approaches to satisfying the requirements of FATCA. Several jurisdictions have already entered into IGAs with the United States, and many others currently are in negotiations with the US Treasury in this regard.

Notice 2013-43

The notice alleviates some of the pressure of the FATCA implementation process, primarily by postponing many of the deadlines set forth in the final regulations. The notice's key provisions are:

- **Withholding.** The January 1, 2014 start date for withholding on most US-source FDAP payments is postponed for six months, until July 1, 2014. The other withholding deadlines set forth in the final regulations remain the same.

- **Grandfathered Obligations.** Payments made under a so-called “grandfathered obligation,” and gross proceeds from the disposition of such an obligation, are exempt from withholding. Under the final regulations, a “grandfathered obligation” includes, among other things, obligations that are outstanding on January 1, 2014. The notice extends this grandfathering treatment by six months, thereby covering obligations that are outstanding on July 1, 2014.
- **Due Diligence.** The deadline by which participating FFIs and other withholding agents are required to have due diligence procedures in place for opening new accounts is postponed for six months, from January 1, 2014 until July 1, 2014. In addition, the deadline by which participating FFIs and other withholding agents are required to complete certain due diligence procedures in connection with preexisting obligations effectively is postponed for six months.
- **Reporting.** Under the final regulations, a participating FFI is required to file information reports about its US accounts with respect to the 2013 and 2014 calendar years by March 31, 2015. The notice does not postpone this deadline, but modifies the final regulations by requiring such reporting only with respect to the 2014 calendar year.
- **Registration.** The FATCA registration website (the portal) is expected to be accessible to FFIs beginning August 19, 2013. FFIs can use the remainder of the 2013 year to familiarize themselves with the portal and, beginning January 1, 2014, can finalize their FATCA registration. FFIs that finalize their registration by April 25, 2014 are guaranteed that they will not be subject to withholding when it goes into effect on July 1, 2014, provided that they comply with any applicable procedural requirements (e.g., by providing a withholding certificate to the withholding agent).
- **IGAs.** Any jurisdiction listed on the US Treasury’s website will be treated as having an IGA in effect, even if such jurisdiction has not yet enacted local legislation to bring the IGA into force.

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