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IRS Issues Preliminary Guidance on the Application of the Foreign Account Tax Compliance Act

September 24, 2010

Executive Summary

On August 27, 2010, the Internal Revenue Service (the IRS) issued Notice 2010-60 (the "Notice")[1] establishing the framework for forthcoming regulatory guidance implementing the withholding and reporting provisions of the Foreign Account Tax Compliance Act ("FATCA").[2] While a number of the most important FATCA provisions do not come into force until 2013, many of the statute's substantive provisions require or permit the U.S. Department of the Treasury (the "Treasury") to issue regulations implementing these provisions, and the Notice is the first significant published guidance in furtherance of what is expected to be a major regulatory project.

FATCA was enacted to address potential abuses of foreign accounts by U.S. persons. Mechanically, the statute generally requires foreign financial institutions ("FFIs") to comply with specific withholding, documentation and information reporting requirements with respect to accounts (such as bank accounts, brokerage accounts and partnership interests) in which U.S. persons hold beneficial interests ("U.S. accounts") or be subject to a 30 percent withholding tax on any "withholdable payments" made to FFIs or their affiliates. "Withholdable payment" is broadly defined to include any payment of income from sources within the United States (excluding U.S. trade or business income), or income from the sale of property that produces either interest or dividends from U.S. sources. Furthermore, the rules set forth in the Notice for identifying U.S. accounts are broad, and include numerous presumptions for when an account is treated as a U.S. account. As a result, the guidance proposed by the Notice could result in significant compliance obligations for FFIs to determine whether U.S. persons hold an interest in a particular account.

The major topics of the Notice are: (i) the definition of a “financial institution,” (*i.e.*, an entity that, if foreign, will be an FFI and thus potentially subject to FATCA); (ii) a description of the compliance obligations for affected financial institutions, including procedures for collecting information and identifying U.S. accounts, as well as for entering into an “FFI Agreement” (which generally will be the key arrangement by which a FFI will be able to avoid the new withholding tax); and (iii) the grandfather rules exempting certain issued and outstanding obligations from potential withholding under FATCA.

The Notice states that the Treasury and the IRS intend to issue proposed regulations based upon the framework and the specific guidance provided in the Notice. The Notice also contains a call for comments before November 1, 2010 on a number of issues described therein.

A brief discussion of the major topics of the Notice follows, along with a summary of the provisions on which comments are sought either with respect to specific proposals or to general regulatory questions raised by the statute. If you would like to discuss the scope of the Notice, its compliance provisions or the possibility of commenting on one or more of the topics in the Notice, please contact any of the lawyers listed on this alert, or the member of the Proskauer Tax Group with whom you normally consult on these matters.

Financial Institutions Defined

FATCA defines a “financial institution” to include any entity that (i) accepts deposits in the ordinary course of a banking or similar business; (ii) as a substantial portion of its business, holds financial assets for the account of others; or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities. However, this definition is qualified in its entirety by a grant of regulatory authority to the Treasury to limit its scope.[3] The Notice states an intent to define financial institution in proposed regulations, and sets forth the Treasury and IRS proposals for limiting the scope of each of the main statutory categories of financial institutions, identifies specific types of entities that are proposed to be excluded from the definition of financial institutions, and discusses certain other entity types that the Treasury and IRS believe require special consideration for determining whether or not such an entity should be treated as a financial institution for FATCA purposes.

Entities Accepting Deposits in the Ordinary Course of a Banking or Similar Business

FATCA treats any entity that accept deposits in the ordinary course of a banking or similar business as a financial institution.[4] The Notice proposes that this category of financial institution generally would include any bank (defined by reference to a statute that affirmatively includes any foreign corporation that otherwise qualifies as a bank),[5] savings bank, commercial bank, savings and loan association, thrift, credit union, building society, and other cooperative banking institution. The Notice states that whether an entity is subject to federal, state or foreign banking law or regulation is relevant, but not determinative, for inclusion in this statutory category. The Notice is not clear as to whether this is meant to expand or narrow the scope of the definition, but as this statutory category only includes deposit-taking entities, the Notice could be read to say that an entity regulated as a bank that accepts no deposits might not be a financial institution within the meaning of this subsection, depending on the factual situation. The practical benefit of this limitation is not clear, and it is not clear from the Notice whether this will be addressed in proposed regulations.

Entities Holding Financial Assets for the Account of Others

FATCA treats any entity that holds financial assets for the account of others as a substantial portion of its business as a financial institution.[6] The Notice proposes that this category may include broker-dealers, clearing organizations, trust companies, custodial banks, and entities acting as custodians of employee benefit plans. As with the proposed scope of the definition of entities accepting deposits, the Notice states that the fact that an entity is subject to banking or broker-dealer laws or regulations is relevant, but not determinative, for inclusion in this statutory category, and in the same manner the impact of this qualification is not clear. Although not discussed in the Notice, the use of the word "may" suggests that the IRS and the Treasury might still be considering the proper scope of this statutory category.

Entities Engaging in the Business of Investing, Reinvesting or Trading in Securities

FATCA treats any entity primarily engaged in the business of investing, reinvesting or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities as a financial institution.[7] The Notice states that this category generally includes, but is not limited to, mutual funds, funds of funds, exchange-traded funds, hedge funds, private equity and venture capital funds, other managed funds, commodity pools, and other investment vehicles.

Of particular significance, the Notice states that the reference to "business" under this category is different in scope and content from the concept of "trade or business" as used elsewhere in the Code, and that isolated transactions that generally might not rise to the level of a "trade or business" may nonetheless be significant enough to cause the entity to be primarily engaged in the business of investing, reinvesting or trading in securities.[8] The Notice indicates that this determination is ultimately fact-specific, and future guidance will provide guidelines for determining what constitutes the business of investing, reinvesting, or trading and when an entity is "primarily" engaged in such a business.

Entities Exempted from the Definition of "Financial Institution" and from FATCA Withholding

FATCA provides that, absent an exception, foreign non-financial institutions are subject to certain document collection and information reporting requirements; such an entity is referred to in the statute as a non-financial foreign entity ("NFFE").[9] The Notice states that proposed regulations are intended to be promulgated that will identify certain classes of entities that are included in or excluded from the definitions of financial institution, and will describe the resulting treatment of such an entity under FATCA.

The Notice identifies certain entities that will be excluded from the definition of financial institution (and thus, if foreign, subject to the requirements imposed on NFFEs and not those imposed on FFIs). The Notice also states that certain payments beneficially owned by these excluded entities will be *exempt* from FATCA withholding entirely. The categories of entities that the Notice proposes to treat as NFFEs ("deemed NFFEs") not subject to FATCA withholding are:

- Holding Companies: Foreign holding companies whose subsidiaries primarily engage in a trade or business other than that of a financial institution; this exception will not include any entity functioning as an investment fund that acquires start-up companies for investment purposes.
- Start-up Companies: Foreign start-up companies that invest capital in assets with the intent to operate a business other than that of a financial institution in the future; this exemption will be limited to the first twenty-four months of the start-up's existence and will not be available for investment funds that invest in start-up entities.[10]
- Non-financial Entities Liquidating or Emerging from Reorganization or Bankruptcy: Foreign entities that are in the process of liquidating assets or reorganizing with the intent to continue operations as a non-financial institution (if such entities were not previously financial institutions).
- Hedging and Financing Centers of a Non-Financial Group: Foreign entities that primarily engage in financing and hedging transactions with or for affiliated group members that are not FFIs where the affiliated group is primarily engaged in a non-financial institution business.

The Notice solicits comments as to the definition of these deemed NFFEs, how withholding agents can identify such deemed NFFEs, and whether other classes of entities falling under the definition of financial institutions should be included as deemed NFFEs exempt from FATCA withholding.

Insurance Companies

The Notice states that FATCA is broad enough to include certain insurance companies and the statute grants regulatory authority to exclude or include insurance companies and certain products sold by insurance companies from the definitions of "financial institution" and "financial account." The Notice states the view that the issuance of insurance or reinsurance contracts without cash value does not implicate the concerns of tax evasion addressed by FATCA, and therefore forthcoming proposed regulations will exclude from the definition of financial institution those insurance companies whose business consists solely of issuing insurance or reinsurance contracts without cash value (including most property, casualty and term life insurance contracts). The Notice specifically distinguishes life insurance or annuity contracts that incorporate an investment component as having cash value and thus potentially raising concerns of tax evasion, and requests comments about the appropriate treatment under FATCA of cash value insurance, annuity and similar contracts, and of an entity in the business of issuing such contracts.

Entities with Identified Holders

There are certain small foreign entities (such as family trusts) for whom the administrative compliance burdens imposed by FATCA would be too high relative to the amount of related U.S. investment, and the Notice states that proposed regulations will identify the conditions under which such an entity would be deemed compliant and not subject to withholding without being required to undertake the full administrative responsibilities of an FFI Agreement.

Financial Institutions Organized in U.S. Territories

The Notice states a general intent not to treat financial institutions organized in U.S. territories ("Territory-Organized FIs") as FFIs; however, a concern is expressed that a Territory-Organized FI may act as an intermediary for payments to FFIs or NFFEs. The Notice proposes that Territory-Organized FIs will be able to represent that they will assume the obligations imposed on U.S. withholding agents in order to avoid FATCA withholding.[11]

Retirement Plans

The Treasury and the IRS intend to issue guidance providing that payments beneficially owned by financial institutions that are qualified retirement plans under foreign law, are sponsored by a foreign employer and do not allow U.S. nonemployees to participate[12] will be exempt from FATCA withholding, because such plans present a low risk of tax evasion. Comments are requested on several aspects of the scope of this exception, including the definition of retirement plan, whether other types of plans (including deferred compensation arrangements) should qualify, and what verification documentation such plans could provide.

U.S. Branches of FFIs

The Treasury and the IRS intend to issue guidance providing that even where an FFI receives withholdable payments solely through a U.S. branch, the FFI generally will be required to execute a withholding agreement to avoid FATCA withholding. However, where a U.S. branch receives a withholdable payment as an intermediary, the Treasury and the IRS are considering permitting the U.S. branch to document its account holders under the provisions applicable to U.S. financial institutions ("USFIs"), discussed below. The Treasury and the IRS also intend to issue regulations regarding the application of the "effectively connected income exclusion" from FATCA withholding with regards to withholding agents making payments to U.S. branches of FFIs.

Controlled Foreign Corporations

Though commenters have previously requested that controlled foreign corporations ("CFCs") be treated as deemed-compliant FFIs, discussed below, the Notice states that the Treasury and the IRS do not believe such treatment is appropriate as the documentation and reporting requirements applicable to CFCs are less stringent than those that will apply to FFIs;[13] however, the Treasury and the IRS intend to issue guidance that will coordinate reporting required under the CFC and FATCA regimes in order to avoid duplicative reporting.

Obligations of FFIs and USFIs

Statutory Framework

FATCA generally requires that an FFI enter into an FFI Agreement in order to avoid "withholdable payments" made to it being subject to 30 percent withholding.[14] Withholdable payments generally include any payment of income from sources within the United States, excluding U.S. trade or business income, or income from the sale of property that produces either interest or dividends from U.S. sources.[15] For example, withholdable payments would include payments resulting in gain derived from the sale of stock of a U.S. corporation.

An FFI Agreement requires that an FFI obtain information from account holders to determine if any of its accounts would be U.S. accounts, comply with due diligence procedures with respect to identifying U.S. accounts, and report certain information with respect to U.S. accounts it maintains.[16] U.S. accounts generally are financial accounts which are held by one or more U.S. persons or U.S.-owned foreign entities.[17] Participating FFIs must also agree to withhold tax on certain payments made to non-participating FFIs and account holders who fail to comply with information requests of the participating FFI ("Recalcitrant Account Holders").[18] An FFI will be deemed to be in compliance ("deemed-compliant FFIs") where either (i) such institution complies with procedures to ensure that it does not maintain U.S. accounts and meets certain other requirements or (ii) such entity is of a class of institutions with respect to which the Treasury determines the application of Section 1471 is not necessary.[19] A withholding agent must also withhold at a 30 percent rate on withholdable payments made to an NFFE unless (i) the beneficial owner of the payment is an "excepted NFFE," (ii) guidance provides that such payment poses a low risk of tax avoidance, or (iii) the NFFE complies with certain documentation and reporting requirements.[20]

Reporting Obligations of FFIs

Under an FFI Agreement, a participating FFI is required to report the following information about each of the U.S. accounts maintained by it:

- Name, address and taxpayer identification number of each account holder (or the substantial U.S. owners of a U.S. owned foreign entity).[21]
- Account number
- Account balance or value.[22]

    - For reporting the balance of a U.S. account, the Notice indicates an FFI will be required to report the highest of the month-end balances, or the highest ofthe most frequently reported balances, during the year.
    - For reporting the value of U.S. accounts, future guidance may require an FFI to report the highest value for each of its accounts during the year, as determined for the purpose that requires the most frequent determination of value by the participating FFI. The Notice suggests examples of purposes for which an FFI might value its accounts, including: financial reporting; determining the compensation of any investment manager of, or investment advisor to, the FFI; reporting to the account holder; or determining any distributions or payments to the account holder.
- Gross receipts and withdrawals from the account.

The IRS is developing new forms for reporting the information required from participating FFIs that will need to be filed electronically.

Elimination of Duplicative Reporting

In order to avoid duplicative reporting, where a participating FFI holds an account of another participating FFI, only the participating FFI with the more direct relationship with the investor or customer will be required to comply with the reporting obligations under FATCA. For example, if a foreign hedge fund maintains a bank account in a foreign country through which it holds its cash reserves, if the foreign hedge fund is treated as having the more direct relationship, only the hedge fund would need to comply with FATCA reporting with respect to its U.S. account holders. The Notice does not indicate how the IRS will determine which participating FFI has a more direct relationship with the account holder.

Identifying U.S. Accounts

The Notice provides an outline of the procedures that participating FFIs will be required to follow in identifying the U.S. accounts maintained by it. While different procedures are outlined for pre-existing and new accounts, as well as individual and entity accounts, in general, where there is any indication of U.S. status of the beneficial owner of the account, there is a presumption that the account is a U.S. account.

Additionally, participating FFIs (as well as other withholding agents) will be required to identify other FFIs it maintains accounts for as participating FFIs, deemed-compliant FFIs, or non-participating FFIs. To facilitate this process, it is intended that the IRS will issue employer identification numbers to participating FFIs.

Pre-Existing Individual Accounts

- As an initial matter, a participating FFI generally may disregard accounts whose average balance during the year was less than $50,000 for purposes of reporting under FATCA.
- For accounts in excess of $50,000, the FFI must next look to whether the documented account holder is treated as a U.S. person for other purposes, and, if so, the account will be treated as a U.S. account.
- If the account holder is not treated as a U.S. person for other purposes, an FFI must still look for any indication of U.S. status.[23] If any indication of U.S. status is present, then the account will be presumed to be a U.S. account, and the FFI must request information to confirm such status.

For accounts with an average monthly balance exceeding $1,000,000, an FFI will have two years from the date it enters into an FFI Agreement with the IRS to obtain documentary evidence confirming the foreign status of account holders it determines should be treated as holding non-U.S. accounts under the procedure discussed above. An FFI will have five years from the date it enters into an FFI Agreement to obtain such documentary evidence for all other individual accounts it determines should be treated as non-U.S. accounts.

New Individual Accounts

The Notice provides procedures for identifying whether new individual accounts are U.S. accounts that are similar to the procedures for pre-existing individual accounts. Prior to examining the account information for any indication of U.S. status, the FFI is required to request documentary evidence of the U.S. or non-U.S. status of the account holder.

Pre-Existing Entity Accounts

- To identify U.S. accounts being held by an entity, FFIs must first look at the treatment of the entity for other purposes; if such entity is treated as a U.S. person for other purposes, then such account will be treated as a U.S. account.

- If the entity is not treated as a U.S. person for other purposes, then the FFI must look for information in electronically searchable files indicating U.S. status, such as a place of incorporation in the United States. Where an indication of U.S. status for the account holder exists, the account will be presumed to be a U.S. account.
- If the account is not treated as a U.S. account under the steps above, then the FFI must identify whether the account holder is an FFI, including whether it is a participating, deemed-compliant FFI or non-participating FFI, or an NFFE, and if it is an excepted NFFE or not.
    - To determine if the account holder is an FFI, the participating FFI must look at the name of the account holder for an indication of FFI status. If the name clearly indicates that the account holder is an FFI, then the account holder will be presumed to be an FFI.
    - If the name does not indicate the account holder is an FFI, then the participating FFI will be required to search available account information for an indication of whether the account holder conducts an active trade or business. If the account information indicates that the account holder conducts an active trade or business, then the account holder will be presumed to be an excepted NFFE and the account will not be treated as a U.S. account.
    - If there is no indication that the account holder conducts an active trade or business in the account information, then the participating FFI should request documentation from the account holder as to its status as an FFI or an NFFE, and obtain information about the account holder's ownership unless the entity is an excepted NFFE.

In general, an FFI will be required to obtain documentary evidence confirming the status of entity accounts determined under the above procedures within one year from the date it enters into an FFI Agreement with the IRS.

New Entity Accounts

An FFI is expected to follow procedures similar to those for existing entity accounts for identifying whether a new entity account is a U.S. account; however, the FFI will also be expected to examine all account information, not just electronically searchable account information, for determining the status of a new entity account.

Identification Procedures in General

The Notice's discussion of the procedures to be applied by an FFI for identifying U.S. accounts, summarized above, is extremely detailed and complicated and should be carefully reviewed by affected taxpayers. Additionally, the procedures bear some resemblance to the documentation requirements under the outbound withholding regulations of Section 1441, but are by no means identical.

Obligations of U.S. Financial Institutions

To comply with their obligations as withholding agents under FATCA, the Notice provides that USFIs will be required to determine whether any entity they make withholdable payments to is a U.S. person, participating FFI, deemed-compliant FFI, non-participating FFI, excepted NFFE, or other NFFE. The procedures that a USFI will be required to follow for determining an entity account holder's status for purposes of FATCA will be similar to those required of an FFI in determining the status of entity account holders.

Grandfathered Obligations

FATCA provides that no deduction or withholding will be required with respect to a payment under any obligation outstanding on March 18, 2012. Regulations to be issued by the Treasury and the IRS will provide that the term "obligation" for purposes of this exemption does not include any instrument treated as equity for U.S. tax purposes or any legal agreement lacking a definitive expiration or term. Additionally, any material modification of an obligation[24] outstanding on March 18, 2012 will cause the obligation to be treated as being reissued and therefore will cease to be exempt from withholding under FATCA.

Areas where Comments are Requested

In addition to comments regarding the information discussed above, the Notice requests specific comments regarding the following issues:

Verification Requirements Applicable to FFIs

Participating FFIs must comply with verification procedures with respect to the identification of U.S. accounts.[25] In this regard, comments have been requested about the procedures performed by public accountants, or other external auditors, when conducting an Anti-Money Laundering/"Know Your Customer" ("AML/KYC") audit or similar engagement, and whether such procedures would be an effective method of verification for purposes of FATCA. The Treasury and the IRS are also considering relying on the representations from high-level management of a financial institution regarding compliance with FATCA and request comments on the reliance on similar written certifications of compliance by auditors when conducting an audit.

Treatment of "Passthru" Payments

As part of an FFI Agreement, an FFI must deduct and withhold on passthru payments made to Recalcitrant Account Holders and non-participating FFIs.[26] Comments are requested as to the methods an FFI can use for determining whether payments to a Recalcitrant Account Holder or non-participating FFI are attributable to withholdable payments, including associated information reporting that might be required of the FFI in relation to determining whether payments are attributable to withholdable payments.

Voluntary Election to be Subject to FATCA Withholding

FATCA provides that a participating FFI may elect to be subject to FATCA withholding rather than act as a withholding agent under FATCA. Comments are requested as to how such an election would work in practice, specifically, what types of financial accounts such an election should be available for and what information reporting would be necessary to determine the amount to withhold.

Sanctions With Respect to Recalcitrant Account Holders

The Treasury and the IRS request comments on what measures should be taken to address long-term recalcitrant accounts, including the possibility of terminating an FFI Agreement due to excessive Recalcitrant Account Holders remaining after a reasonable period of time.

Restrictions by FFIs Prohibiting U.S. Account Holders

Comments have been requested as to whether an FFI should be deemed-compliant FFI where such FFI is subject to restrictions in its organizing documents, e.g. its corporate charter or limited partnership agreement, that prohibit it from having U.S. account holders.

Electronic Filing Requirements

The Notice indicates that the current intent is to have electronic filing requirements effective for returns filed for taxable years ending after December 31, 2012. Comments have been requested as to whether and how this electronic filing date properly coordinates with the general effective date of FATCA, December 31, 2012.

Application of FATCA to Non-USFI U.S. Withholding Agents

The Notice indicates that the Treasury and the IRS are considering permitting non-USFI U.S. withholding agents to rely on a foreign entity's certification as to its classification for purposes of FATCA, e.g. an IRS Form W-8BEN. Additionally, it is proposed that future guidance will provide an exception for Non-USFI U.S. withholding agents from withholding on payments made to an NFFE engaged in an active trade or business. Comments on the appropriateness of such an exception and other exceptions to withholding on payments to an NFFE that might be appropriate are requested.

Information from Available from Other Sources

Comments have been requested on possible approaches that would reduce the burden on participating FFIs by utilizing information that is already being provided to the IRS, and readily available through other means.

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[1] IRS Notice 2010-60, 2010-37 I.R.B. (Aug. 27, 2010).

[2] FATCA was enacted as part of the Hiring Incentives to Restore Employment Act of 2010, P.L. 111-147 (Mar. 18, 2010) and added a new Chapter 4 (Sections 1471 through 1474) to Subtitle A of the Internal Revenue Code of 1986, as amended (the "Code").

[3] Section 1471(d)(5). All Section references are to the Code except where otherwise noted.

[4] Section 1471(d)(5)(A).

[5] The Notice proposes using the Section 585(a)(2) definition of "bank," which includes any entity that is a bank within the meaning of Section 581 (generally any entity subject to state or federal banking supervision and in the business of receiving deposits and making loans) *plus* any entity that would be a bank within the meaning of Section 581 but for it being a foreign corporation.

[6] Section 1471(d)(5)(B).

[7] Section 1471(d)(5)(C).

[8] Whether an entity is engaged in a "trade or business" in the United States is an important threshold question for determining whether and to what extent an entity that is a nonresident for U.S. tax purposes is subject to U.S. income tax on income effectively connected with such a trade or business. *See* Sections 864(b), 871(b) and 881(a). Because of the importance of this question, there is a large and well-developed body of case law and administrative guidance relating to what constitutes a "trade or business." Should proposed regulations under FATCA define "business" differently than "trade or business," the applicability of existing authority in determining whether or not an entity is engaged in a business is not certain.

[9] Section 1472.

[10] In contrast to the "start-up year" exception under the Passive Foreign Investment Company ("PFIC") regime, Section 1298(b)(2), the exception for start-up companies under FATCA is limited to the two years following *formation* and not the first taxable year in which the corporation has gross income.

[11] *See* Sections 1441 and 1442, and the Treasury Regulations thereunder. *The* Notice also indicates guidance is being considered that would allow Territory-Organized FIs that are investment funds to be treated as NFFEs with respect to payments it receives on their own account.

[12] This exclusion also will include U.S. employees that are employed in a country other than the country where the plan is established (*i.e.*, a U.K. plan open to French-resident, U.S. national employees would not be eligible).

[13] In general, a CFC is a foreign corporation more than 50 percent of whose total combined voting power or value is owned by certain "significant" U.S. shareholders, *i.e*. shareholders who each hold 10 percent or more. *See* Sections 951 and 957.

[14] Section 1471(a).

[15] Section 1473.

[16] Section 1471(b)(1)(A), (B) and (C).

[17] Section 1471(d)(1).

[18] Section 1471(b)(1)(D).

[19] Section 1471(b)(2).

[20] Section 1472.

[21] A substantial U.S. owner of a foreign entity is defined as a U.S. person holding more than 10 percent of the stock or beneficial interests, by vote or value, of such entity. *See* Section 1473(2).

[22] All account balances or values will be required to be reported in U.S. dollars. Future guidance will provide the appropriate method for foreign currency translation.

[23] The Notice indicates that such indicators will include: identification of the account holder as a U.S. resident or citizen; association of the account with a U.S. address; a U.S. place of birth for the account holder; a "care of," "hold mail," or P.O address that is the sole address for the account holder; a power of attorney granted to a person with a U.S. address; instructions to transfer funds to an account maintained in the United States or receipt of directions for the account from a U.S. address.

[24] *See* Treasury Regulations §1.1001-3.

[25] Section 1471(b)(1)(B).

[26] A "passthru" payment is defined as any withholdable payment or other payment to the extent attributable to a withholdable payment, Section 1471(d)(7).

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