

IRS Announces Extended FATCA Deadlines

October 25, 2012

On October 24, 2012, the U.S. Internal Revenue Service (IRS) issued Announcement 2012-42: Timelines for Due Diligence and Other Requirements Under FATCA (Announcement). The Announcement provides that final regulations (Final Regulations) issued under the tax provisions commonly referred to as the Foreign Account Tax Compliance Act (FATCA) [1], when issued, will extend certain deadlines for compliance with FATCA and also clarify the scope of "grandfathered obligations" under FATCA. This client alert summarizes key aspects of the Announcement. [2]

Background

On February 8, 2012, the U.S. Treasury Department (Treasury) and the IRS released substantial proposed regulations (Proposed Regulations) implementing FATCA. Additionally, on September 12, 2012, the United States and the United Kingdom entered into an agreement intended to facilitate implementation of FATCA based on domestic reporting and to improve reciprocal information sharing between the two countries, based on model intergovernmental agreements (IGAs) published in July, 2012.

In response to these developments, more than 100 substantive comment letters were submitted to the Treasury and the IRS, discussing (among a wide range of other matters) practical issues relating to timely implementation of the requirements of the Proposed Regulations, coordinating the compliance deadlines under the Proposed Regulations and the model IGAs, and a variety of questions about the scope of the definition of "grandfathered obligations," which generally are outside the scope of FATCA. The Announcement states that the Treasury and the IRS, in consideration of comments received, intend to issue Final Regulations that modify the Proposed Regulations in certain important respects.

Extension of FATCA Deadlines

According to the Announcement, the Final Regulations will extend certain key deadlines under FATCA:

- *Gross Proceeds Withholding.* Withholding on gross proceeds from the disposition of property that can produce U.S.-source interest or dividends will be required commencing on January 1, 2017, instead of January 1, 2015.
- *Implementing New Account Opening Procedures.* Withholding agents generally will be required to implement the new account opening procedures prescribed under FATCA by January 1, 2014, instead of January 1, 2013.
- *Completing Due Diligence on Preexisting Obligations.* The deadlines for withholding agents to document the FATCA status of account holders with respect to "preexisting obligations" will be extended. A "preexisting obligation" generally is any account, instrument or contract maintained or executed prior to January 1, 2014. The new deadlines vary depending upon the type of withholding agent, the type of account holder and, with respect to accounts held by individuals, the value of the account. The earliest deadline for documenting account holders with respect to "preexisting obligations" will be June 30, 2014, which applies to withholding agents documenting payees that are "prima facie" foreign financial institutions (FFIs).
- *First Deadline for FATCA Reporting.* The first deadline for "participating FFIs" to file information reports with the IRS (on as yet unreleased IRS forms) will be March 31, 2015 (covering both 2013 and 2014), instead of September 30, 2014 (covering 2013 only).

Clarification of the Scope of Grandfathered Obligations

As described in the Proposed Regulations, payments in respect of "grandfathered obligations" are not "withholdable payments" or "passthru payments." [3] The Announcement clarifies that under the Final Regulations, the definition of grandfathered obligations will be modified and expanded to include:

- (i) Any obligation that can produce a "foreign passthru payment" but not a "withholdable payment" that is outstanding on the date that is six months after final regulations defining foreign passthru payments are published [4];

(ii) Any instrument that can give rise to "withholdable payments" solely because the instrument gives rise to a "dividend equivalent amount" under Section 871(m) (e.g., certain equity swaps) that is outstanding on the date that is six months after final regulations are published treating that type of instrument as giving rise to a "dividend equivalent amount" [5]; and

(iii) Any obligation to make a payment with respect to or to repay collateral posted to secure a notional principal contract that is itself a "grandfathered obligation."

If you would like to discuss the Announcement or FATCA-related matters generally at any time, please contact any of the lawyers listed on this client alert or the member of the Proskauer Tax Group with whom you normally consult on these matters.

* * *

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document 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 that is contained in this document.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

[1] FATCA refers to Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (Code).

[2] Please see our previous client alerts "[IRS Posts Draft Revised Withholding Forms Conforming to FATCA](#)" (June 8, 2012) and "[IRS and Treasury Department Publish Anticipated FATCA Guidance](#)" (February 9, 2012).

[3] Prop. Regs. Sec. 1.1471-2(b)(1).

[4] The Proposed Regulations generally reserve on the definition of "foreign passthru payment." See Prop. Regs. Sec. 1.1471-5(h).

[5] For a discussion of Section 871(m) and dividend equivalent amounts, please see our client alert "[IRS and Treasury Department Publish Anticipated Guidance on "Dividend Equivalent" Payments Derived from Equity Swap Arrangements](#)" (January 27, 2012).

Related Professionals

- **Mary B. Kuusisto**
Partner
- **Amanda H. Nussbaum**
Partner
- **Scott S. Jones**
Partner
- **Charles (Chip) Parsons**
Partner
- **Jamiel E. Poindexter**
Partner
- **Marc A. Persily**
Partner
- **Ira G. Bogner**
Managing Partner
- **Sarah K. Cherry**
Partner
- **Bruce L. Lieb**
- **Nigel van Zyl**
Partner
- **Arnold P. May**
Partner
- **David W. Tegeler**
Partner
- **David T. Jones**

Partner

- **Martin T. Hamilton**

Partner

- **Howard J. Beber**

Partner

- **Robin A. Painter**

Partner

- **Christopher M. Wells**

Partner

- **Stephen T. Mears**

Partner