

MEMO# 25335

July 14, 2011

IRS Notice on Timeline for Implementing FATCA

[25335]

July 14, 2011

TO: TAX MEMBERS No. 22-11

INTERNATIONAL MEMBERS No. 30-11 RE: IRS NOTICE ON TIMELINE FOR IMPLEMENTING FATCA

The Internal Revenue Service (“IRS”) today issued the attached notice (Notice 2011-53) providing a modified timeline for implementing the so-called “FATCA” information reporting and withholding provisions under Chapter 4 of the Internal Revenue Code (“Code”). The guidance addresses: the timeframe for foreign financial institutions (“FFIs”) to file applications to become participating FFIs (“PFFIs”); the due diligence requirements for PFFIs; reporting; withholding; the anticipated release dates for proposed and final regulations; and miscellaneous issues.

FATCA, as we informed you previously, was enacted in 2010 [\[1\]](#) and applies generally to payments made after December 31, 2012. The ICI’s recent FATCA comment letter [\[2\]](#) raised several concerns with the deadlines for implementing FATCA. The IRS Notice states that it is being issued because of numerous comments received concerning the practical difficulties of implementing the Chapter 4 rules within the time frames provided by the Act and IRS Notices 2010-60 [\[3\]](#) and 2011-34 [\[4\]](#).

PFFI Applications

The IRS will begin accepting FFI applications through an electronic submission process no later than January 1, 2013. An FFI must enter into an FFI Agreement by June 30, 2013 to ensure that it will be treated as a PFFI by the time the FATCA withholding provisions apply under the Notice – either January 1, 2014 – for “fixed, determinable, annual or periodic” (“FDAP”) payments – or January 1, 2015 – for all other types of payments (including gross proceeds and passthru payments).

The effective date of any FFI Agreement entered into before July 1, 2013 will be July 1, 2013. The effective date of any FFI Agreement entered into after June 30, 2013 will be the date the FFI enters into the Agreement.

PFFI Due Diligence

PFFIs will be required to put into place procedures, as described in Notice 2010-60, to identify U.S. accounts opened on or after the effective date of the FFI Agreement. For pre-existing accounts, PFFIs will be required within one year after the effective date of the FFI Agreement to take steps with respect to preexisting accounts associated with a private banking relationship and having a balance or value of at least \$500,000. For private accounts with balances or values below \$500,000, the due diligence procedures must be met by the later of December 31, 2014 or one year after the effective date of the FFI Agreement. For all other pre-existing accounts, the due diligence procedures must be satisfied within two years after the effective date of the FFI Agreement.

Reporting

Any account for which a PFFI has an IRS Form W-9 by June 30, 2014 must be reported to the IRS as a U.S. account by September 30, 2014. For the first reporting year, in general, PFFIs will be required to report only the name, address, and U.S. taxpayer identification number of its U.S. account holders, the account balance as of December 31, 2013, and the account number.

Withholding

FATCA withholding will apply, pursuant to the Notice, beginning on January 1, 2014 for “fixed, determinable, annual or periodic” (“FDAP”) payments and on January 1, 2015 for all other types of payments (including gross proceeds and passthru payments). As a result, PFFIs will not be required to compute and publish their passthru payment percentages, as set forth in Notice 2011-34, before the first calendar quarter of 2014.

Other Issues

The IRS anticipates issuing proposed FATCA regulations by December 31, 2011 and final FATCA regulations during the summer of 2012.

The Notice provides that all qualified intermediary (“QI”) and other withholding agreements, of entities qualifying as FFIs, that expire on December 31, 2012 will be extended automatically until December 31, 2013. Any FFI that enters into an FFI Agreement by December 31, 2013 will be considered to have renewed its QI (or other) withholding agreement.

The Notice clarifies the scope of the withholding exception provided for obligations outstanding on March 18, 2012. Specifically, the Notice provides that the term “obligation” means any legal agreement that produces or could produce passthru payments (including withholdable payments), but not including any instrument treated as equity for U.S. tax purposes or any legal agreement that lacks a definitive expiration or term.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) 24186, dated March 17, 2010. The Chapter 4 withholding regime was enacted in March 2010 as part of the Hiring Incentives to Restore Employment (“HIRE”) Act. FATCA is the acronym for “Foreign Account Tax Compliance Act,” which was an earlier version of the Chapter 4 withholding regime enacted as part of the HIRE Act.

[2] See Institute [Memorandum](#) 25267, dated June 9, 2011.

[3] See Institute [Memorandum](#) 24517, dated August 30, 2010.

[4] See Institute [Memorandum](#) 25134, dated April 21, 2011.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.