

MEMO# 25897

February 14, 2012

Proposed FATCA Regulations - a Summary

[25897]

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TO: TAX MEMBERS No. 9-12

INTERNATIONAL MEMBERS No. 7-12

INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 5-12

TRANSFER AGENT ADVISORY COMMITTEE No. 10-12

BROKER/DEALER ADVISORY COMMITTEE No. 8-12 RE: PROPOSED FATCA REGULATIONS - A SUMMARY

INTRODUCTION

The attached memorandum summarizes proposed regulations (hereafter “the regulations”) issued by the Treasury Department and Internal Revenue Service (“IRS”) on February 8 [\[1\]](#) to implement the Foreign Account Tax Compliance Act (“FATCA”). [\[2\]](#) Also discussed is a Joint Statement issued by the United States, France, Germany, Italy, Spain, and the United Kingdom regarding an intergovernmental approach to improving international tax compliance and implementing FATCA. [\[3\]](#)

The regulations change in many significant ways the preliminary conclusions reached in three IRS Notices [\[4\]](#) regarding how FATCA should be implemented. We are particularly pleased with the changes that reflect comments that we [\[5\]](#) and others have made to the IRS to reduce burdens placed on the fund industry without diluting the tax compliance goals of the legislation. These changes reflect a more appropriate balance between these burdens and benefits. Nevertheless, considerable additional work most likely will be necessary for the proper balance to be achieved. We look forward to continuing our productive conversations with Treasury Department and IRS officials regarding FATCA’s application to funds, their distributors, and their shareholders.

The Joint Statement reflecting Governments’ desire to develop a common approach to resolving global issues with respect to FATCA’s implementation also is welcome. We are encouraged that the Organization for Economic Cooperation and Development (“OECD”) will be involved in this effort. Industry and the OECD have worked together for several years, on projects such as the Tax Relief and Compliance Enhancement (“TRACE”) initiative, to develop balanced rules for various tax administration purposes.

The attached memorandum discusses the regulations' provisions of most interest to funds, their distributors, and their investors. The items discussed in the memorandum include:

- FATCA's background;
- the statutory definitions;
- effective dates;
- the agreement that the IRS will require certain foreign financial institutions ("FFIs") to implement to be "FATCA compliant" (the "FFI agreement");
- the procedures for identifying U.S. persons;
- the investor information that must be provided to the IRS;
- tax withholding considerations;
- exceptions for "deemed-compliant funds" that qualify as:
 - "registered deemed-compliant FFIs" (such as "local FFIs," "qualified collective investment vehicles," "restricted funds," and funds that comply with requirements under an agreement between the U.S. and their home-country government); or
 - "certified deemed-compliant FFIs" (such as certain retirement funds and non-profit organizations);
- debt and equity securities issued by banks and brokers;
- exempt payments to certain beneficial owners;
- recovery of taxes;
- other FATCA-specific issues; and
- the Joint Statement issued by the U.S., France, Germany, Italy, Spain, and the U.K.

Keith Lawson
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[Attachment](#)

endnotes

[1] The regulations (totaling 388 pages) can be accessed through the press release located at <http://www.irs.gov/newsroom/article/0,,id=254068,00.html>.

[2] See Institute [Memorandum](#) # 24186, dated March 17, 2010.

[3] This Joint Statement also can be accessed through the press release located at the link in footnote 1.

[4] See Institute Memorandum # [25335](#), dated July 14, 2011 (IRS Notice 2011-53); # [25134](#), dated April 21, 2011 (IRS Notice 2011-34); and # [24517](#), dated August 30, 2011 (IRS Notice 2010-60).

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