

**MEMO# 26096**

April 30, 2012

# ICI Submission on Proposed FATCA Regulations

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TO: TAX MEMBERS No. 21-12  
INTERNATIONAL MEMBERS No. 15-12  
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 11-12  
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 13-12  
TRANSFER AGENT ADVISORY COMMITTEE No. 27-12  
BROKER/DEALER ADVISORY COMMITTEE No. 21-12 RE: ICI SUBMISSION ON PROPOSED  
FATCA REGULATIONS

The ICI today submitted to the Treasury Department and the Internal Revenue Service the attached letter regarding the Proposed Regulations issued on February 8 [\[1\]](#) to implement the Foreign Account Tax Compliance Act ("FATCA"). [\[2\]](#) These proposed regulations build upon three IRS Notices regarding FATCA implementation [\[3\]](#) and the substantial comments received from ICI [\[4\]](#) and others in the financial services industry. The ICI letter also discusses the Joint Statement, also issued on February 8, by the United States, France, Germany, Italy, Spain, and the United Kingdom. [\[5\]](#)

The ICI letter focuses exclusively on issues that affect U.S. funds. Only one of these issues, however, deals directly with the treatment of U.S. funds and the character (as discussed below) of payments made by U.S. funds. The other issues involve customer documentation issues, the treatment of retirement accounts, and the need for additional transition relief.

Importantly, the letter urges that all amounts attributable to a U.S. fund be treated as having a U.S. source only to the extent of the fund's investments in U.S.-source assets. The substantial delay in imposing withholding on foreign passthru payments, while granted for sound policy reasons and appreciated greatly by foreign funds, exacerbates exponentially the competitive concerns that we raised previously.

The customer documentation issues discussed in the letter fall into three broad areas. First, the letter encourages efforts to maximize global harmonization of tax compliance and treaty relief measures and government-to-government information-sharing arrangements. The intergovernmental agreement that was discussed in the February 8 Joint Statement, and its relationship to a project at the Organization for Economic Cooperation and Development ("OECD") for tax relief and compliance enhancement (the "TRACE project") is

discussed in this section of the letter. The letter also supports steps taken in the Proposed Regulations to reduce some of the more burdensome and novel customer identification requirements that were contained in the IRS Notices that preceded the Proposed Regulations. Finally, the letter suggests several additional modifications to these rules to reduce further the burdens imposed without reducing FATCA's tax compliance objectives.

The letter supports the many significant improvements made by the Proposed Regulations to the treatment of retirement plans and accounts. The typical foreign retirement account does not provide U.S. persons with the ability to hide assets. While many of the requirements contained in the Proposed Regulations (which are based on U.S. principles) are not problematic, a few requirements create significant, if not overwhelming, difficulties for certain types of retirement accounts. While we suggest targeted changes for some of these issues, we submit that a more comprehensive and effective solution should be provided. Specifically, we suggest that the Final Regulations state that, except to the extent provided by the Secretary, any retirement plan organized under a country's laws for the principal purpose of saving for retirement will be treated as a deemed compliant FFI, as an exempt beneficial owner, and as excluded from the definition of financial account.

Funds and financial institutions will need sufficient time, after final FATCA regulations are issued, to comply with the new and detailed obligations that will be imposed on them. To address these concerns, we request that FATCA's requirements apply no sooner than one full calendar year after the FATCA regulations are finalized. Under our proposal, finalization of the regulations in 2012 would cause FATCA's reporting requirements to apply beginning with payments made in calendar year 2014. Similarly, because the timeline provided by the Proposed Regulations calls for FATCA's withholding rules to apply beginning one calendar year after the FATCA reporting rules become effective, it would follow under our proposal that FATCA withholding would begin on January 1, 2015. All of the Proposed Regulations' other requirements, such as receiving customer documentation on specific forms, would apply no sooner than January 1, 2014.

Keith Lawson  
Senior Counsel - Tax Law

[Attachment \(in .pdf format\)](#)

#### **endnotes**

[1] See Institute [Memorandum](#) # 25886, dated February 8, 2012. See *also* Institute [Memorandum](#) # 25897, dated February 14, 2012.

[2] See Institute [Memorandum](#) # 24186, dated March 17, 2010. 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. FATCA will impose new customer identification, reporting, and withholding responsibility on financial institutions that have direct or indirect investments or activities in the United States and are not otherwise exempted from the requirements.

[3] See Institute Memoranda # [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).

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

[5] See Institute [Memorandum](#) # 25897, dated February 14, 2012.

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