

MEMO# 28090

May 5, 2014

IRS Provides FATCA Transaction Relief

[28090]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 22-14

TAAC FATCA TASK FORCE No. 5-14

TRANSFER AGENT ADVISORY COMMITTEE No. 23-14

OPERATIONS COMMITTEE No. 22-14 RE: IRS PROVIDES FATCA TRANSACTION RELIEF

The IRS has released Notice 2014-33, which provides that calendar years 2014 and 2015 will be regarded as a transition period for FATCA and for certain of the related changes to other withholding provisions. [\[1\]](#) The IRS states that during this transition period, the IRS will take into account the extent to which a participating or deemed-compliant FFI, direct reporting NFFE, sponsoring entity, sponsored FFI, sponsored direct reporting NFFE, or withholding agent has made “good faith efforts” to comply with the requirements of FATCA and the other updated withholding regulations. However, an entity that has not made good faith efforts to comply with FATCA and the updated withholding regulations will not be given any relief from IRS enforcement during the transition period.

Regarding good faith efforts to comply, the IRS provides two examples. First, “the IRS will take into account whether a withholding agent has made reasonable efforts during the transition period to modify its account opening practices and procedures to document the [FATCA] status of payees, apply the standards of knowledge provided in [FATCA], and, in the absence of reliable documentation, apply the presumption rules” contained in the regulations. Second, “the IRS will consider the good faith efforts of a participating FFI, registered deemed-compliant FFI, or limited FFI to identify and facilitate the registration of each other member of its expanded affiliated group as required for purposes of satisfying the expanded affiliated group requirement[.]”

The IRS and Treasury also intend to revise the necessary regulations to provide:

- i. that a withholding agent or FFI may generally (subject to limitations) treat an obligation (which includes an account) held by an entity that is opened, executed, or issued on or after July 1, 2014, and before January 1, 2015, as a preexisting obligation for purposes of FATCA;
- ii. additional guidance under section 1471 concerning the requirements for an FFI (or a branch of an FFI, including a disregarded entity owned by an FFI) that is a member of an expanded affiliated group of FFIs to be treated as a limited FFI or limited branch, including the requirement for a limited FFI to register on the FATCA registration

website;

- iii. a modification to the standards of knowledge for withholding agents for accounts documented before July 1, 2014; and
- iv. a revision to the definition of a reasonable explanation of foreign status.

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endnotes

[1] Notice 2014-33 is available at: <http://www.irs.gov/pub/irs-drop/n-14-33.pdf>

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