

MEMO# 25886

February 8, 2012

Proposed FATCA Regulations Issued; Detailed Analysis to Follow

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TO: TAX MEMBERS No. 7-12

INTERNATIONAL MEMBERS No. 5-12

INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 3-12

TRANSFER AGENT ADVISORY COMMITTEE No. 9-12

BROKER/DEALER ADVISORY COMMITTEE No. 7-12 RE: PROPOSED FATCA REGULATIONS
ISSUED; DETAILED ANALYSIS TO FOLLOW

The Treasury Department and Internal Revenue Service (“IRS”) issued proposed regulations [\[1\]](#) today 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.

Some additional transition relief, beyond that described in the IRS Notices, is provided because of the difficulties that firms will encounter in complying with FATCA by the previously-announced implementation dates. For example, reporting will begin in 2016 for income payments made during calendar year 2015 and in 2017 for gross proceeds payments made during calendar year 2016. Moreover, withholding will not be required with respect to foreign passthru payments (such as payments, attributable to U.S. sources, that are made by a non-U.S. fund to its investors) before January 1, 2017.

We are studying the proposed regulations closely and will provide a detailed analysis soon. In addition, ICI and ICI Global separately will provide detailed comments on the proposed regulations as they impact U.S. and non-U.S. funds, respectively. These comments will be submitted by the April 30, 2012 deadline provided by the regulations.

Importantly, six countries – the United States, France, Germany, Italy, Spain, and the United Kingdom – issued a joint statement today regarding an intergovernmental approach to improving international tax compliance and implementing FATCA. [\[5\]](#) A properly-crafted intergovernmental approach would address legal impediments to FATCA compliance, simplify practical implementation, and reduce costs on financial institutions. The Joint Statement includes a possible framework for an intergovernmental approach. In addition, the six countries commit to working with the Organization for Economic Cooperation and

Development (“OECD”) and others on adapting FATCA in the medium term to a common model for automatic exchange of information; this automatic exchange mechanism could result in countries, on a reciprocal basis, receiving information about their residents’ “foreign” accounts without necessarily implementing their own versions of FATCA.

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