The Treasury Department and IRS Release Final FATCA Regulations

On January 17, 2013, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) released long-awaited final regulations on the set of statutory rules commonly referred to as FATCA.[1] As more fully described in our prior Alert from March 2012, FATCA establishes an information reporting regime intended to reduce evasion of U.S. taxes by identifying U.S. persons holding assets through offshore entities and accounts.

The January release follows on the heels of the execution of a number of intergovernmental agreements (IGAs), which allow for country-specific procedures for implementing FATCA. The final regulations do not mark a fundamental shift in the implementation of the FATCA regime. Rather, the final regulations make extensive, but technical, refinements to last year's proposed regulations under FATCA (see our March 2012 Alert), while also better conforming the regulations to the IGAs. Additionally, the regulations adopt many industry recommendations submitted in response to the proposed regulations.

The most significant components of the final regulations include:

- Extension of a number of effective dates (many of which were previously set out in IRS Announcement 2012-42 (see our October 2012 Alert)) relating to when accountholder diligence must be completed and withholding and reporting must commence (see the timeline in Appendix A to this Alert for further detail on new timing considerations);
- Clarification and expansion of rules pertaining to compliance by foreign financial institutions (FFIs), in particular by providing more detail on the procedures by which FFIs can become participating FFIs;[2]
- Expansion of the grandfathering rules to exempt from FATCA withholding all obligations outstanding on January 1, 2014 (and associated collateral);[3]
- Expansion of prior guidance on categories of persons generally exempt from FATCA withholding (*e.g.*, registered deemed-compliant FFIs, certified deemed-compliant FFIs and exempt beneficial owners);
- Reduction of administrative burdens on FFIs associated with identifying U.S. accounts, including by calibrating due diligence and documentation requirements based on the value and risk profile of an account;
- Streamlining of FFI registration and technical implementation, including by providing for a new online web portal where participating FFIs, registered deemed-compliant FFIs, and certain other entities will register with the IRS; and
- Additional information on the forthcoming Treasury and IRS guidance, forms and tools intended to further assist stakeholders with FATCA compliance.

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[1] FATCA, or the Foreign Account Tax Compliance Act, was first introduced in 2009 and officially added to the Internal Revenue Code (Code) by the Hiring Incentives to Restore Employment Act of 2010 on March 18, 2010.
[2] In general, a participating FFI is an FFI that enters into an FFI agreement with the IRS and thereby assumes due diligence, reporting and withholding obligations relating to the FFI's accountholders.
[3] Also exempt are certain obligations that may give rise to FATCA withholding after such date due to future rulemaking concerning "foreign passthru payments" under FATCA or Section 871(m) of the Code.

If you would like to discuss the final regulations or other issues concerning FATCA implementation or compliance, please contact your usual Ropes & Gray lawyer.

For those readers interested in more detail, below we provide (A) a discussion of the increasing focus on IGAs in implementing FATCA and the implications of this approach, (B) a discussion of key issues relevant to certain industry groups affected by FATCA, and (C) a summary of forthcoming FATCA guidance and areas for development. Appendix A to this Alert provides a timeline summarizing some of the key compliance and effective dates under FATCA, as modified by the final regulations.

A. Implications of the Increasing Focus on an Intergovernmental Approach

Since publication of the proposed regulations in February 2012, the Treasury has signed or initialed eight IGAs with non-U.S. governments[4] and reports that, as of November 2012, it is in discussions with over fifty countries. The objective of IGAs is to gather the same information as is required from FFIs under the final regulations, while resolving local law conflicts, facilitating FATCA implementation and reducing burdens for IGA-country FFIs. The IGAs make FATCA compliance a requirement of the partner government.

There are two types of IGAs. The first, the Model 1 IGA, requires an FFI to report all information directly to its home government, which will then share the information with the United States. FFIs that comply with a Model 1 IGA will be deemed to be in compliance with the final regulations and will not be required to enter into FFI agreements with the IRS. Seven of the eight IGAs signed or initialed so far are Model 1 "reciprocal" IGAs, which require the U.S. and foreign signatory governments to mutually exchange information regarding taxpayers of the two countries.[5] In contrast to the Model 1 agreement, the Model 2 agreement requires an FFI to report directly to the IRS instead of the FFI's home government and to comply with the final regulations, including by entering into an FFI agreement, except to the extent authorized by a specific Model 2 IGA. On February 14, 2013, Switzerland became the first country to sign a Model 2 IGA.

The recent emphasis on the IGAs is noteworthy in several regards. First, to the extent more governments sign IGAs, especially Model 1 IGAs, the compliance questions and material terms relevant to FFIs in such countries will be shifted to the IGAs and local law and away from the final regulations. Second, the IGAs, including Model 2 IGAs, will likely decrease compliance burdens on entities in countries with IGAs in place as the IGAs will generally reduce or eliminate inconsistencies with FATCA duties and local law obligations and provide added flexibility and other benefits. For example, and notably, existing Model 1 and Model 2 IGAs generally eliminate (Model 1) or substantially reduce (Model 2) the likelihood that an FFI covered by such an IGA will be required to impose withholding under FATCA, in particular with respect to recalcitrant accounts. For this reason, some parties may prefer to deal with counterparties that are FFIs in countries with IGAs, in particular Model 1 IGAs.

On the flip side, increased reliance on IGAs may lead to requirements of greater disclosure with respect to accounts maintained in the United States by non-U.S. investors, creating additional reporting burdens for U.S. withholding agents. The extent to which U.S. withholding agents will be subject to reciprocal reporting requirements under the IGAs that exceed their current reporting obligations under the Code for non-U.S. persons is currently unclear and subject to future guidance.

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[4] The Treasury has signed or initialed IGAs with the governments of Denmark, Ireland, Italy, Mexico, Norway, Spain, Switzerland and the United Kingdom.

[5] The Treasury has released both "reciprocal" and "non-reciprocal" versions of the Model 1 IGA. The "non-reciprocal" Model 1 IGA does not require the United States to provide information to the partner government regarding investment by the partner government's nationals in the United States. No "non-reciprocal" Model 1 IGAs have been entered into to date.

B. Key Industry Issues

The discussion below offers our general observations about key issues FATCA raises for certain industry groups. The actual effect of the FATCA rules on a particular entity or group of entities must be analyzed in light of its specific facts and circumstances.

I. Investment Funds and Managers

Private Equity, Hedge and Certain Other Investment Funds. The specific application of the FATCA rules to entities such as private equity funds and hedge funds will depend on the structure of a given fund group. Most hedge fund groups and many private equity fund groups include both U.S. and non-U.S. entities. Consequently, a fund group may be impacted both by the requirements imposed on withholding agents and on FFIs. In particular:

- *U.S. Funds*. Affected U.S. funds will typically include U.S. stand-alone or feeder funds (*e.g.*, those formed in Delaware) and master funds, mini-masters and certain other fund entities that are organized in the United States. U.S. funds will not be required to enter into an FFI agreement but will be withholding agents under FATCA and thus subject to the withholding, reporting and due diligence obligations under FATCA applicable more generally to withholding agents that are not participating FFIs.
- *Non-U.S. Funds*. Under the final regulations, a non-U.S. entity that "functions or holds itself out" as a collective investment vehicle, mutual fund, exchange-traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund or any similar investment entity is an FFI. Thus, as with other affected persons, in order to avoid withholding on U.S.-source income or gross proceeds under FATCA, a non-U.S. fund will generally either need to (i) become a participating FFI by entering into an FFI agreement, (ii) qualify as a registered deemed-compliant FFI, or (iii) be covered by an IGA.
    - *Registered Deemed-Compliant FFIs* – Consistent with the proposed regulations, the final regulations provide and liberalize at least two avenues (qualified collective investment vehicles and restricted funds), as well as add a new avenue (sponsored investment entity), for a non-U.S. fund to qualify as a registered deemed-compliant FFI.[6] These three categories are described briefly below.
        - *Qualified Collective Investment Vehicle (QCIV)* – The purpose of the QCIV category of deemed-compliant FFIs is to provide relief for investment entities that are owned solely through participating FFIs or directly by large institutional investors, payments to which would not be subject to FATCA withholding or reporting. Very generally, a QCIV is defined as a fund that (i) is "regulated as an investment fund" (as described below) and (ii) is owned solely by participating FFIs, registered deemed-compliant FFIs or certain other U.S. and non-U.S. institutional investors that themselves are not

[6] The final regulations provide for or maintain several other categories of deemed-compliant FFIs that include "sponsored, closely-held investment vehicles," certain pre-2012 "limited life debt investment entities" (essentially, securitization special purpose vehicles), as well as certain local FFIs and "owner-documented FFIs"; in general, most of these categories are unlikely to apply to a typical investment fund structure.

subject to FATCA withholding or reporting (note, U.S. and non-U.S. individuals are not permitted to invest directly in a QCIV).[7]

- *Restricted Fund* – The purpose of the restricted fund deemed-compliant category is to provide relief for non-U.S. funds that target primarily non-U.S. investors. Very generally, a restricted fund is defined as a fund that (i) is "regulated as an investment fund," (ii) is organized in a FATF-compliant jurisdiction,[8] (iii) provides for either direct issuance and redemption of interests by the fund (no secondary market sales)[9] or a sale of such interests through certain distributors, including those that are participating FFIs, registered deemed-compliant FFIs, non-registered local banks and restricted distributors, and (iv) generally, does not permit sales to U.S. investors (other than certain exempted U.S. institutional investors), nonparticipating FFIs or passive non-financial foreign entities with one or more substantial U.S. owners.[10]

- We note below some items of interest for non-U.S. funds assessing their status under these two registered deemed-compliant FFI categories:

  - In response to comments, the final regulations expand the QCIV and restricted fund definitions to treat a fund as "regulated as an investment fund" if: (i) it is regulated as an investment fund by its country of organization, (ii) it is regulated in all of the countries in which it is registered and all of the countries in which it operates, or (iii) its manager is regulated with respect to the fund in all of the countries in which the fund is registered and in all of the countries in which the fund operates. The final regulations do not otherwise provide guidance as to what constitutes "regulated as an investment fund" for a QCIV or restricted fund. For example, funds that are organized in the Cayman Islands and registered as "mutual funds" with the Cayman Islands Monetary Authority or are subject to comparable registration regimes in other non-U.S. jurisdictions may be viewed as "regulated" for this purpose, but the matter is not entirely clear. The regulations also do not provide guidance concerning what it means for a fund to "operate" in a country. In particular, it is unclear whether investing or trading in a particular country constitutes "operating" in such country for this purpose.

  - A QCIV or restricted fund is not required to enter into an FFI agreement, but is required to: (i) register with the IRS (and obtain a "Global Intermediary Identification Number" (GIIN), (ii) have its "responsible officer" certify as to its status every three years, and (iii) maintain its registered deemed-compliant FFI records and agree to report status changes to the IRS. A restricted fund has to meet additional account

[7] The final regulations generally permit seed capital from a U.S. sponsor that is a "specified U.S. person" (and thus prohibited from investing in a QCIV) provided that the sponsor has not held, and does not intend to hold, its seed capital interests for more than three years.

[8] As more specifically defined in the final regulations, a FATF-compliant jurisdiction means a jurisdiction substantially in compliance with the anti-terrorist financing and money laundering policies of the Financial Action Task Force, an intergovernmental body that develops and promotes international policies to combat money laundering and terrorist financing.

[9] The final regulations clarify that, for this purpose, interests in the fund that are issued by the fund through a transfer agent or distributor that does not hold the interests as a nominee of the accountholder will be considered to have been issued directly by the fund.

[10] The final regulations give restricted funds until the later of June 30, 2014, or six months after the date the fund registers as a registered deemed-compliant FFI to amend their distribution agreements, prospectuses and other marketing materials to, among other things, provide that sales and other transfers of interests in the fund to these prohibited investors are not permitted.

review, certification, withholding and other requirements under the final regulations, including implementing, by the date it registers as a registered deemed-compliant FFI, policies and procedures to ensure that it generally does not open or maintain accounts for the prohibited investors.

- In order for an FFI to maintain the status of a QCIV or restricted fund (or participating FFI), every other FFI in its "expanded affiliated group"[11] generally must be a participating FFI or another registered deemed-compliant FFI. This rule effectively imposes FATCA requirements on non-U.S. funds without U.S.-source income if other non-U.S. funds within its expanded affiliated group have U.S.-source income and thus must be FATCA compliant.

- *Sponsored Investment Entity* – The final regulations introduce a new category of registered deemed-compliant FFI—the "sponsored investment entity"—that should prove useful for non-U.S. funds that share a common investment manager. An investment entity (other than a qualified intermediary, a withholding partnership or a withholding trust) can qualify for this status if a U.S. or non-U.S. entity that is authorized to manage the investment entity and enter into contracts on its behalf (such as an investment manager or managing partner) has agreed to act as a "sponsoring entity" (SE) for the investment entity. By so agreeing, the SE assumes the diligence, withholding, reporting and other requirements that the sponsored investment entity would have been required to perform directly if it were a participating FFI. To assume this role, the SE must register itself and each sponsored investment entity with the IRS, agree to perform FATCA requirements as if it were a participating FFI, and maintain its status with the IRS. A sponsored investment entity will not be required to enter into its own FFI agreement with the IRS. The sponsored investment entity, however, will remain liable for any failure by the SE to comply with such requirements.[12] Qualifying a fund sponsor as an SE is expected to centralize and streamline the FATCA compliance process for fund complexes.

- *IGAs* – As of this writing, the Treasury has signed an IGA with Ireland, and we understand that the Treasury is negotiating IGAs with various other popular offshore jurisdictions for investment funds (including Jersey, Isle of Man and Guernsey) and is in discussions with other such jurisdictions (including the Cayman Islands) toward concluding an IGA. We further understand that the Treasury is also working to explore intergovernmental options with other jurisdictions (*e.g.*, Bermuda, BVI, Saint Maarten and Gibraltar). (See Part A for further information on IGAs.)

U.S. Registered Funds. As domestic entities, U.S. funds registered under the Investment Company Act of 1940 and treated as regulated investment companies (RICs) under the Code are U.S. withholding agents and thus subject to the withholding, reporting and due diligence obligations under FATCA applicable more generally to withholding agents that are not participating FFIs. Distributions from a RIC to a non-FATCA-compliant shareholder generally will be subject to FATCA withholding, subject to the following phase-ins:

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[11] The term "expanded affiliated group" is an expansion of the term "affiliated group" as defined under Section 1504(a) of the Code. Very generally, an expanded affiliated group will include entities under greater than 50 percent common control, measured by vote or value.

[12] The final regulations also provide a similar category of registered deemed-compliant FFI for a "sponsored controlled foreign corporation" that is, directly or indirectly, wholly owned by a U.S. financial institution that agrees to act as the SE and meets certain other requirements.

- Ordinary dividend payments beginning on January 1, 2014;
- Dividend payments reported by a RIC as either "capital gain dividends" or "short-term capital gain dividends" beginning on January 1, 2017; and
- Payments on the redemption, sale or other disposition of a RIC's shares beginning on January 1, 2017.

In some cases, a RIC may have established a wholly owned non-U.S. subsidiary (*e.g.*, for purposes of making commodities investments), which will generally constitute an FFI under FATCA. Although depending on the registration status and other circumstances of a particular subsidiary, the final regulations may provide a few potential avenues for these subsidiaries to qualify as registered deemed-compliant FFIs (*e.g.*, as QCIVs (discussed above)), we expect that many investment advisers to these subsidiaries will choose to register with the IRS as SEs (also discussed above) of these subsidiaries, thereby agreeing to perform, on behalf of the subsidiaries, as well as any other sponsored investment entities within their complex, the due diligence, reporting and other requirements that the subsidiaries would have been required to perform if they were participating FFIs. In this event, the sponsored subsidiaries will be considered registered deemed-compliant FFIs and will not be required to enter into their own FFI agreements. A subsidiary's FATCA compliance requirements may alternatively be covered by an IGA between the United States and the subsidiary's country of organization. As noted above, the Treasury is in IGA discussions with the Cayman Islands, where many of these subsidiaries are organized.

<u>Fund Managers</u>. The final regulations provide that fund managers, investment advisers and general partners should generally expect to be regarded as financial institutions (by virtue of being "investment entities") under the final regulations. Thus, to the extent such entities are non-U.S. persons, they are likely to be FFIs that need to register as participating FFIs (unless they can otherwise qualify as deemed-compliant) or, should an IGA be in place, comply with their local country IGAs.[13]

<u>Derivatives and Related Transactions</u>. Payments made on many different types of financial instruments in which funds frequently invest can potentially be subject to FATCA withholding. Helpfully, the final regulations grandfather all "obligations" (which include most financial instruments, except, notably, those that are treated as equity for U.S. tax purposes or that lack a stated expiration or term) that are outstanding on January 1, 2014 (and that are not significantly modified on or after that date). These so-called "grandfathered obligations" generally will be exempt from FATCA withholding.

For investment funds that engage in derivatives transactions, the final regulations expand and clarify the grandfathering rule in respect of such transactions in a few important ways, including:

- Derivatives transactions entered into between a fund and a counterparty under an ISDA master agreement and evidenced by a confirmation prior to January 1, 2014 will be grandfathered; however, a typical master agreement itself will not be a grandfathered obligation.

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[13] A non-U.S. fund manager will generally have to become FATCA compliant only if it is receiving withholdable payments or foreign passthru payments that would be subject to FATCA withholding or it is part of an expanded affiliated group with other FFIs. The final regulations clarify that a withholdable payment includes any investment advisory fees that constitute U.S.-source income, but only to the extent such fees are not otherwise considered income that is effectively connected with the manager's conduct of a trade or business in the United States.

- Collateral obligations securing a grandfathered derivative or other obligation will also be grandfathered obligations, even if the collateral itself is not a grandfathered obligation. For ISDA collateral agreements (and collateral more generally), if collateral secures both grandfathered and non-grandfathered obligations, the amount securing each must be allocated pro rata by value to determine what amounts are or are not subject to FATCA withholding.
- Obligations (*e.g.*, total return swaps on a U.S. equity) that give rise to withholdable payments solely because the obligations are treated as giving rise to dividend equivalent payments pursuant to Section 871(m) of the Code and the regulations thereunder will be grandfathered obligations, provided they are executed on or before the date that is six months after the date on which obligations of their type are first treated as giving rise to dividend equivalents.[14]

II. Non-U.S. Operating Companies (and Non-U.S. Affiliates of U.S. Operating Companies). Non-U.S. operating companies will generally be considered non-financial foreign entities, not FFIs, under FATCA, and thus can avoid FATCA withholding by certifying as to their status, and in some cases, providing information about their substantial U.S. owners, to withholding agents. The final regulations provide new exceptions to FFI status for certain affiliates of non-financial entities even though such affiliates may be performing financial functions. Specifically, holding companies (including tiered holding companies), treasury centers, and captive finance companies that are part of a non-financial group may qualify for this new exception from FFI status.[15] However, this exception is not available to such entities if they are formed in connection with or availed of by a private equity fund, venture capital fund, leveraged buyout fund or similar investment vehicle established with an investment strategy to acquire or fund companies and hold them for investment purposes. The scope of this limitation is unclear and, in some cases, could cause uncertainty regarding whether a particular holding company or another entity listed above should be classified as an FFI or non-financial foreign entity under FATCA.

III. Non-U.S. Pension Funds and Governmental Entities. Non-U.S. pension and other retirement funds, governmental entities, international organizations, non-U.S. central banks and entities wholly owned by these types of entities will generally be exempt from FATCA as exempt beneficial owners and consequently will generally not be required to enter into an FFI agreement or register with the IRS[16] in order to avoid FATCA withholding.[17]

The final regulations eliminate the certified deemed-compliant FFI status for certain non-U.S. retirement funds provided for in the proposed regulations and, instead, expand the scope of non-U.S. retirement funds

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[14] The IRS and the Treasury Department previously released in January 2012 temporary and proposed regulations under Section 871(m) of the Code. Generally, the proposed regulations substantially expanded the statutory regime of what can constitute a dividend equivalent payment that is treated as a U.S.-source dividend for U.S. federal income tax purposes. The proposed regulations were originally scheduled to be finalized before a planned effective date of January 1, 2013. However, in August 2012, the planned effective date was pushed back until January 1, 2014, and the proposed regulations have not yet been finalized or otherwise reissued as of this writing.
[15] The final regulations provide a similar (although more limited) "excepted inter-affiliate FFI" exception intended to cover entities in financial groups that include dormant entities, entities that were formed for a specific deal and were not subsequently liquidated, or entities formed for regulatory purposes whose activities are entirely within the financial group.
[16] Exempt beneficial owners will be required to certify their status to withholding agents.
[17] Nonetheless, these types of entities, *e.g.*, sovereign wealth funds and non-U.S. pension and retirement funds, should carefully analyze their ability to qualify as exempt beneficial owners based on the detailed requirements for such qualification set out in the final regulations.

that can qualify as exempt beneficial owners.[18] Very generally, under the expanded definition, six types of retirement funds so qualify: (i) treaty-qualified retirement funds, (ii) broad participation retirement funds, (iii) narrow participation retirement funds, (iv) funds formed pursuant to a plan similar to a Code Section 401(a) plan, (v) investment vehicles established exclusively to earn income for the benefit of certain retirement and pension funds and accounts, and (vi) pension funds of exempt beneficial owners, each as described more fully in the final regulations.

In addition, to coordinate the final regulations with the IGAs, the definition of exempt beneficial owner in the final regulations includes any person treated as an exempt beneficial owner under an IGA, including a retirement plan or fund specified in Annex II to an IGA that does not otherwise qualify as an exempt beneficial owner under the regulations.[19]

C. List of Notable Forthcoming Guidance

While the final regulations mark a major milestone in the implementation of FATCA, the Treasury and IRS are expected to promulgate a number of key pieces of further guidance, including:

- *FFI Model Agreement*. The Treasury and IRS expect to publish a revenue procedure, which will, among other items, set out the terms of the FFI agreements consistent with the final regulations[20] and coordinate an FFI's obligations with the provisions of any applicable IGA.
- *Registration Portal*. The IRS expects to provide a new online web portal where participating FFIs, registered deemed-compliant FFIs and certain other entities will register with the IRS. (See Appendix A to this Alert for timing information.)
- *Tax Certificates*. The Treasury and IRS have previously issued a draft version of each of Form W-8IMY, W-8BEN (for individuals and entities), W-8EXP and W-8ECI, which were revised to provide for the new FATCA categories. Final forms of all tax certificates are expected to be released this year.
- *FATCA Reporting Form (Form 8966)*. The IRS plans to issue Form 8966 (FATCA Report), which FFIs and other relevant entities will use to comply with their FATCA reporting obligations.
- *Withholding Reports (Forms 1042)*. The IRS expects to issue revised versions of Form 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) and Form 1042-S (Foreign Person's U.S. Source Income Subject to Withholding) to allow withholding agents to meet their collective reporting obligations under Chapter 3 of the Code and FATCA.
- *Coordinating Guidance*. The Treasury and IRS plan to issue guidance coordinating the FATCA rules with current withholding and reporting rules.
- *Foreign Passthru Payments*. The Treasury and IRS intend to define "foreign passthru payments" in subsequent regulations.[21]

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[18] The final regulations also expand the types of retirement and pension accounts that are not treated as financial accounts for FATCA purposes.
[19] The Model IGAs grant each country fairly broad authority to define, in Annex II to an IGA, what retirement plans or funds, government entities and other entities presenting a low risk of tax evasion will qualify as not subject to FATCA withholding.
[20] The final regulations set forth all of the substantive requirements applicable to an FFI under the FFI agreement.
[21] Any withholding imposed on these payments will not apply before the later of January 1, 2017 or six months after the final regulations are published defining this term.

If you would like to discuss the final regulations or other issues concerning FATCA implementation or compliance, please contact your usual Ropes & Gray lawyer.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing or recommending to another party any tax-related matters addressed herein.

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Timeline of Certain Key Dates for Withholding Agents (WAs) and Participating Foreign Financial Institutions (PFFIs)*

LEGEND: Key Information Reporting / Diligence Dates | Key Withholding Dates | Key PFFI Registration Dates

2013

1/1/13
Statutory effective date
- PFFI reporting on accountholders is effective from January 1, 2013, although the due date of the 2013 report is delayed until March 31, 2015 (PFFIs)

7/15/13
Registration will become available on or before this date (PFFIs)
- PFFIs should register and prepare to make ongoing compliance certifications through the online portal

10/25/13
Last date for PFFIs to register with online portal to be included in December 2, 2013 PFFI list (PFFIs)
- The list is expected to be updated monthly thereafter

2014

1/1/14
Newly opened accounts will no longer be considered pre-existing accounts (PFFIs and WAs)
- New on-boarding procedures must be in place for new accounts

1/1/14
Withholding on U.S.-source FDAP commences on new accounts (until appropriate documentation is received) and on pre-existing accounts that have already been documented as non-participating FFI accounts (PFFIs and WAs)

Newly issued obligations and those materially modified on or after this date that generate U.S.-source FDAP or gross proceeds will generally no longer be grandfathered obligations (PFFIs and WAs)

6/30/14
Due diligence for pre-existing accounts of *prima facie* FFIs must be complete (PFFIs and WAs)

7/1/14
Withholding on U.S.-source FDAP commences on pre-existing accounts that are *prima facie* FFIs (until appropriate documentation is received) (PFFIs and WAs)

12/31/14
Due diligence of pre-existing high-value accounts of individuals must be complete (PFFIs)

2015

1/1/15
Withholding on U.S.-source FDAP commences on pre-existing high-value accounts of individuals that have become recalcitrant account holders (PFFIs)

3/15/15
Deadline for filing of Forms 1042/1042-S to first report withholdable payments of U.S.-source FDAP (for calendar year 2014) (WAs and PFFIs)

3/31/15
Deadline for PFFIs to make their first FATCA reports (for calendar years 2013 and 2014) (PFFIs)
- Reports with respect to calendar year 2015 and beyond on Form 8966 are expected to be due on March 31 of each succeeding year

12/31/15
Due diligence of all remaining pre-existing accounts must be complete (PFFIs and WAs)

2016

1/1/16
Withholding on U.S.-source FDAP commences on remaining pre-existing accounts (until appropriate documentation is received) (PFFIs and WAs)

2017

1/1/17
Earliest date that withholding on foreign passthru payments may commence (PFFIs)
Gross proceeds withholding commences (PFFIs and WAs)

2018

3/15/18
Deadline for filing Forms 1042/1042-S to first report withholdable payments of gross proceeds (for calendar year 2017) (WAs and PFFIs)

*The above timeline provides a brief summary of certain key dates applicable to WAs and PFFIs (which generally include U.S. financial institutions acting as WAs and foreign financial institutions (FFIs) that have become PFFIs by entering into an FFI agreement with the IRS). This timeline does not cover any other key dates that may be applicable to other entities affected by FATCA, including registered deemed-compliant FFIs or those FFIs that comply with an intergovernmental agreement.