

# FATCA Deadlines Extended

**July 15, 2013**

On July 12, 2013, the U.S. Internal Revenue Service (IRS) issued Notice 2013-43 (Notice) which extends certain key deadlines for implementing FATCA [1], and provides guidance regarding the effect of these deadlines on FATCA intergovernmental agreements between the United States and other countries (IGAs) [2]. The Notice also provides guidance as to the effect of IGAs that have been signed but not yet entered into force.

The Notice states that the Treasury Regulations implementing FATCA issued earlier this year will be amended to incorporate the changes set forth in the Notice, and further provides that taxpayers may rely on the Notice until such time. The Notice also provides that such changes generally will apply to existing IGAs through their "most favored nation" provisions and that similar changes are intended to be incorporated into future IGAs.

## Key Deadlines Extended

The Notice announces the extension of the following deadlines for the imposition of withholding under FATCA, and the completion of the FATCA-related due diligence and registration requirements:

- *FATCA Withholding on Certain U.S. Source Income.* Withholding on "withholdable payments" other than gross proceeds (generally, U.S. source dividends, interest and certain other income) will be required commencing on July 1, 2014, rather than January 1, 2014. The Notice does not change the date for the commencement of FATCA withholding on "withholdable payments" that consist of gross proceeds from the disposition of property that can produce U.S. source interest or dividends, which will commence on January 1, 2017.

*Scope of "Grandfathered Obligation."* Obligations will be treated as "grandfathered obligations" (and therefore generally not subject to FATCA withholding) if such obligations are outstanding on July 1, 2014, as compared to the previous cut-off date of January 1, 2014. For this purpose, an "obligation" generally includes legally binding debt agreements or instruments that are not treated as equity for U.S. tax purposes, and which satisfy certain other conditions.

- *FATCA Registration - IRS Website.* The Notice delays the expected activation date of the IRS website for FFI registration from July 15, 2013 to August 19, 2013 [3]. The IRS will electronically post the first list of FFIs that have registered under FATCA by June 2, 2014 (rather than December 2, 2013). Therefore, to ensure inclusion on this FFI list, an FFI now must finalize its registration by April 25, 2014 (instead of October 25, 2013) [4].
- *Global Intermediary Identification Numbers (GIINs).* The Notice announces that GIINs (which are the identification numbers that will be assigned by the IRS to FFIs to be used in connection with FATCA compliance and reporting) are expected to be issued by the IRS beginning in 2014, rather than in 2013.
- *Effective Date of FFI Agreement.* The Notice states that the effective date of the FFI agreement of a "participating FFI" (PFFI) that registers with the IRS and receives its GIIN by June 30, 2014, will be June 30, 2014.
- *New Account Opening Procedures.* The Notice provides that withholding agents under FATCA generally will be required to implement the new FATCA account opening procedures by July 1, 2014 (or, if the withholding agent is a PFFI, the later of either July 1, 2014 or the effective date of its FFI agreement), rather than January 1, 2014.

*Due Diligence on Pre-Existing Obligations.* The Notice establishes that a "preexisting obligation" is an obligation that is outstanding on June 30, 2014 (or for a PFFI, an obligation that is outstanding on the effective date of its FFI agreement), rather than December 31, 2013. For this purpose, an "obligation" generally is any account, instrument or contract maintained, executed or issued by a withholding agent. The deadlines for withholding agents to complete due diligence with respect to preexisting obligations (such deadlines vary by the FATCA status of the withholding agent) are postponed by six months. For example, a withholding agent that is not a PFFI is required to document payees that are "prima facie FFIs" by December 31, 2014, rather than June 30, 2014. A PFFI is required to complete FATCA diligence with respect to preexisting obligations by the effective date of its FFI agreement.

- *First FATCA Information Report.* The first deadline for PFFIs to file FATCA information reports with the IRS remains March 31, 2015. However, the Notice provides that the information report to be filed by this deadline will cover 2014 only, which is a change from prior guidance which provided that the first FATCA information report required to be filed by PFFIs would cover both 2013 and 2014.

#### Guidance Regarding IGAs

The Notice addresses the manner in which a financial institution should register under FATCA if the financial institution is resident in a jurisdiction that has signed an IGA with the United States, but that IGA is not yet in force because the jurisdiction has not yet completed the necessary internal procedures to implement the IGA. In particular, if the jurisdiction is listed on a specified Treasury website [5], the financial institution should register under FATCA as if the IGA is in force. The jurisdictions currently listed on the Treasury website are Denmark, Germany, Ireland, Mexico, Norway, Spain, United Kingdom, Japan and Switzerland. The United States is in the process of finalizing IGAs or otherwise actively engaged in dialogue with many jurisdictions regarding entering into IGAs (such jurisdictions include, among many others, the Cayman Islands, Guernsey, Jersey, Luxembourg, the Netherlands and Singapore). Accordingly, it is expected that additional jurisdictions will be added to the Treasury website in the future.

The Notice also provides that, if a partner jurisdiction does not take the steps necessary to bring its IGA into force within a "reasonable period of time," the United States may remove the partner jurisdiction from the list, and FFIs within such jurisdiction will cease to be entitled to the status provided under the IGA and will have to update their status on the FATCA registration website accordingly. However, the Notice provides no further guidance as to what steps an affected FFI would be required to take to comply with FATCA thereafter, provides no transition relief in such a circumstance, and therefore leaves FFIs and their counterparties with considerable uncertainty. Notably, the Notice is silent as to whether or not the removal of a partner jurisdiction from the website would constitute an abrogation of the IGA by the United States in its entirety, or would only temporarily suspend the benefits of the IGA for affected FFIs until the partner jurisdiction takes steps to bring the IGA into force. Additionally, the Notice only contemplates the possibility of a partner jurisdiction failing to take steps to bring an IGA into force, and does not address how the IRS intends to treat FFIs in a partner jurisdiction which fails to perform their obligations under a Model 1 IGA.

If you would like to discuss the Notice or FATCA-related matters generally at any time, please contact any of the lawyers listed on this alert or the member of the Proskauer Tax Group with whom you normally consult on these matters.

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[1] "FATCA" is the common name for the withholding and information reporting regime codified at Sections 1471 -1474 of the U.S Internal Revenue Code of 1986, as amended. FATCA generally requires foreign financial institutions (FFIs) and certain other foreign entities to undertake diligence to identify U.S. accounts, and report certain information to the IRS with respect to such U.S. accounts, or suffer 30% U.S. withholding on certain U.S. source "withholdable payments" and on foreign "passthru" payments that such foreign entities receive. An IGA is an agreement entered into by the United States and another jurisdiction that provides for an alternative method of implementing FATCA.

[2] Please see our previous client alerts "[U.S. Tax Authorities Issue Final FATCA Regulations](#)" (January 25, 2013), "[IRS Announces Extended FATCA Deadlines](#)" (October 25, 2012), "[United Kingdom and United States Conclude FATCA Intergovernmental Agreement](#)" (September 25, 2012), "[ISDA Publishes 2012 FATCA Protocol](#)" (August 28, 2012), "[IRS Posts Draft Revised Withholding Forms Conforming to FATCA](#)" (June 8, 2012), "[IRS and Treasury Department Publish Anticipated FATCA Guidance](#)" (February 9, 2012) and "[IRS Issues Preliminary Guidance on the Application of the Foreign Account Tax Compliance Act](#)" (September 24, 2010).

[3] From August 19, 2013 through December 31, 2013, a financial institution will be able to create and access its IRS FATCA account and modify its FATCA registration information without submitting the information in final form to the IRS. Beginning January 1, 2014, each financial institution will be required to finalize its FATCA registration.

[4] FFIs covered by a Model 1 IGA will have an extended period to register under FATCA.

[5] The current list of jurisdictions that are treated as having an IGA in effect is available at the following address: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>.

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