IRS Announces Six-Month Extension to Start of FATCA Withholding Requirements

By Robert Kerr, CPA, MS/MBA, MST

The IRS and Treasury Department issued Notice 2013-43 on July 12 announcing a six-month extension to the start of some withholding and account due diligence requirements under the Foreign Account Tax Compliance Act (FATCA) (P.L. 111-147). Treasury will now require withholding to begin on July 1, 2014. The FATCA registration website that was originally scheduled to be available on July 15, 2013 has been delayed until August 19, 2013. The registration portal will be accessible for foreign financial institutions (FFIs) to set up an account, enter and modify (if needed) their registration information through December 31, 2013. FFIs will then have to log on to the portal and submit their registration as final by April 25, 2014 in order for an FFI to receive a Global Intermediary Identification Number ("GIIN") and be included on the IRS' published list of compliant FFIs, scheduled to be posted on June 2, 2014.

Phased Implementation

FATCA requires FFIs to report information about financial accounts held by U.S. taxpayers, as well as accounts held by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The IRS issued final regulations in January 2013 (T.D. 9610). The final regulations provide for a phased implementation of FATCA beginning January 1, 2014, and continuing through 2017.

Extension

Under the Notice, withholding agents generally will be required to begin withholding on withholdable payments made after June 30, 2014 to non-compliant FFIs. Other key FATCA deadlines, including expected timelines for the implementation of withholding on gross proceeds from sales of U.S. securities and pass-through payment withholding, remain unchanged. The first report of information under FATCA continues to be due in 2015, and will include information about accounts maintained during 2014.

Intergovernmental Agreements

The U.S. has developed model intergovernmental agreements (IGAs) to implement FATCA. Under the first model agreement, FFIs report the information required by FATCA to their respective governments, which then provides this information to the IRS. Under the second model agreement, the foreign jurisdiction directs its FFIs to report the information required by FATCA directly to the IRS.

The U.S. has signed IGAs with Mexico, Canada, the United Kingdom, Japan, Germany and a number of other jurisdictions. The six-month delay will not impact the momentum for negotiations with other countries, the Treasury reported. The Treasury declined to predict how many more FATCA agreements will be signed during the extension.

The Notice also provides that the IRS will keep a list of jurisdictions to be treated as having an IGA in effect (published on the Treasury website). The IRS and Treasury intend to include on this list all jurisdictions that have signed an IGA but have not yet taken steps to enforce the IGA under their local law. FFIs that are resident in a jurisdiction listed on the Treasury website can register with the IRS as a deemed compliant FFI.

For More Information

For more information about the final FATCA regulations, see our May Blog post, FATCA Non-Compliance Triggers Harsh Penalties for Withholding Agents. If you have any questions, please contact your CBIZ Tofias tax advisor, or you may reach us at TheBottomLine@cbiztofias.com and 888.761.8835.

Rob Kerr is a Director in the Tax Group. He can be reached at RKerr@cbiztofias.com and 401.626.3228.