

F.A.T.C.A. 24/7

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I.R.S. RELEASES “GOOD FAITH” NOTICE

I.R.S. Notice 2014-33, issued on May 2, 2014, established a major relaxation of the F.A.T.C.A. withholding regime that will begin on July 1, 2014. While not providing for a delayed implementation, the Notice says that all affected persons may treat 2014 and 2015 as a transition period in which such parties must show a good faith effort to comply with F.A.T.C.A. As long as they act in good faith, there will be no liability for any withholding agent who did not properly withhold for F.A.T.C.A. or for any Foreign Financial Institution (“F.F.I.”) that failed to properly register or fill out the appropriate forms. While the scope of actions that comprise good faith is somewhat unclear, this notice eliminates the need for withholding agents to seek perfection in F.A.T.C.A. compliance, which may have driven them to over-withhold.

The I.R.S. also said that the definition of a pre-existing account will be delayed from July 1, 2014, to January 1, 2015. As a result, new on-boarding procedures can be delayed until January 1, 2015, and U.S. withholding agents do not have to get the new forms such as the Form W-8BEN-E until the end of the year. Likewise, F.F.I.’s do not have to get those forms from their own account holders until the end of the year.

I.R.S. RELEASES VARIOUS FORMS, INSTRUCTIONS

The I.R.S. released the much anticipated Form W-8IMY on April 30. The Form W-8IMY will need to be used by qualified or non-qualified intermediaries, foreign partnerships and foreign simple or grantor trusts. The I.R.S. has still not released instructions that will supplement the newly published F.A.T.C.A. compliant forms. I.R.S. officials said that the agency is working diligently to complete instructions for the series of W-8 forms covering W-8BEN-E, W-8IMY and W-8EXP.

The I.R.S. is still in the process of amending the qualified intermediary agreements under F.A.T.C.A. The regulations issued hint at what to expect, such as changes to withholding responsibilities. Additionally, there have been numerous updates to the frequently asked questions on the I.R.S. F.A.T.C.A. website. Taxpayers need to pay particular attention to registering with the I.R.S. for F.A.T.C.A. compliance.

On May 5, the I.R.S. made available final instructions for Form 1042, reflecting important changes required by F.A.T.C.A.

NEW I.G.A.'S SIGNED OR AGREED UPON IN SUBSTANCE

Intergovernmental agreements ("I.G.A.'s") are being signed, revised, or released with all deliberate speed in anticipation of the July 1, 2014 impending withholding deadline. These include the following:

- On April 17, 2014, Mexico revised and re-issued their Mexico-USA I.G.A. of November 19, 2012.
- On April 23, 2014, Belgium signed a Model 1 I.G.A.
- On April 28, 2014, Australia followed suit.
- On April 29, 2014, the U.S. and Bulgaria reached a Model 1 I.G.A. agreement in substance.
- On May 1, 2014, Israel followed suit.
- On May 9, 2014, Hong Kong and the U.S. agreed to a Model 2 I.G.A. in substance.

RUSSIA IN LIMBO

As a recent response to the political turmoil following Crimea's decision to secede from Ukraine and join Russia, the U.S. has halted discussion with Russia on implementing the I.G.A. This will be a major blow to streamlined compliance for the hundreds of Russian banks and financial institutions with U.S. investments. Russia is considering domestic law changes that will help its financial institutions to comply with F.A.T.C.A. The Treasury noted that Russian banks may be able to sign up directly for F.A.T.C.A. as well.

AGREEMENT IN SUBSTANCE

The I.R.S. has published a list of about 30 countries that have reached agreement in substance on an I.G.A. (e.g., India, Bahamas, Gibraltar, and Liechtenstein). The I.R.S. has indicated that a financial institution in that country may treat itself as if the I.G.A. has been signed, at least until the end of the year. This I.R.S. statement is beneficial since financial institutions in Model 1 I.G.A. countries are given an added six months to register on the I.R.S. electronic portal and get a G.I.I.N., which is the F.A.T.C.A. identification number issued by the I.R.S., although it would be prudent to register as soon as possible due to concern that the U.S. withholding agents may get confused by the maze of new F.A.T.C.A. forms and inadvertently withhold.

F.A.T.C.A. F.A.Q.'S UPDATED

On May 13, 2014, the I.R.S. updated their F.A.T.C.A. F.A.Q.'s by providing that trustees needing to register a trustee-documented trust should use the same

procedures used by sponsors to register sponsored entities. In this regard, the F.A.Q.'s state that the I.R.S. is developing a streamlined process for sponsoring entities to register sponsored entities on the registration portal and additional information will be provided at a later date. Under a transitional rule, the temporary and proposed regulations provide that, for payments prior to January 1, 2016, a sponsored entity may provide the G.I.I.N. of its sponsoring entity on withholding certificates if it has not yet obtained a G.I.I.N. Thus, a sponsored entity does not need to provide its own G.I.I.N. until January 1, 2016 and is not required to register before that date.

