

## tax lawflash

April 10, 2014

## Initial FATCA Registration/Withholding Dates Draw Near

*Foreign financial institutions, such as offshore funds, should register with the IRS by May 5 and review new and revised IRS forms.*

The July 1 start date for Foreign Account Tax Compliance Act (FATCA) withholding on certain payments of U.S. source income<sup>1</sup> is fast approaching, and no extensions of that start date are on the horizon.<sup>2</sup> In this regard, foreign financial institutions (FFIs), such as non-U.S. investment funds, should consider the below FATCA compliance steps and take immediate action to prepare for FATCA.

### 1. Register with the Internal Revenue Service and get a Global Intermediary Identification Number by May 5.

- The Internal Revenue Service (IRS) recently extended the deadline for registration of FFIs from April 25 to May 5. FFIs must register with the IRS by **May 5** to be included in the first list of FFIs that are not subject to FATCA withholding (the First List), which the IRS will publish on June 2. Upon registration, an FFI will receive a Global Intermediary Identification Number (GIIN) that the FFI will provide to withholding agents to identify themselves as registered FFIs and to prevent FATCA withholding.<sup>3</sup>
- We believe that there will be considerable confusion regarding U.S. withholding on payments made on and after July 1. For example, withholding agents may withhold on payments to nonregistered FFIs, even with respect to FFIs that are subject to extended registration timelines (e.g., in the case of an FFI located in a "Model 1 IGA" jurisdiction).
- We believe that withholding agents making payments subject to FATCA withholding will want to see FFIs on the First List because withholding agents will be cross-checking GIINs provided on a Form W-8BEN-E with GIINs associated with FFIs included on the First List.
- As a result, FFIs—even in jurisdictions with Intergovernmental Agreements (IGAs)<sup>4</sup>—should register on the IRS FATCA website by May 5 and obtain a GIIN in order to be included on the First List and to reduce the risk of inadvertent withholding on or after July 1.

1. For an overview of FATCA, see our July 15, 2013 LawFlash, "Treasury Revises FATCA Implementation Timeline," available at [http://www.morganlewis.com/pubs/Tax\\_LF\\_TreasuryRevisesFATCAImplementationTimeline\\_15july13](http://www.morganlewis.com/pubs/Tax_LF_TreasuryRevisesFATCAImplementationTimeline_15july13).

For a discussion of FATCA prior to the promulgation of the final FATCA regulations, see our October 26, 2012 LawFlash, "Revisions to FATCA Implementation," available at [http://www.morganlewis.com/pubs/Tax\\_LF\\_RevisionsToFATCAImplementation\\_26oct12](http://www.morganlewis.com/pubs/Tax_LF_RevisionsToFATCAImplementation_26oct12); our March 5, 2012 LawFlash, "FATCA Proposed Regulations Unveiled by Treasury," available at [http://www.morganlewis.com/pubs/Tax\\_LF\\_FATCAProposedRegsUnveiled\\_5mar12](http://www.morganlewis.com/pubs/Tax_LF_FATCAProposedRegsUnveiled_5mar12); and our August 26, 2011 LawFlash, "Recent IRS Notices Provide Supplemental FATCA Guidance and Phased-in Implementation," available at [http://www.morganlewis.com/pubs/Tax\\_LF\\_FATCAGuidancePhased-inImplementation\\_26aug11.pdf](http://www.morganlewis.com/pubs/Tax_LF_FATCAGuidancePhased-inImplementation_26aug11.pdf).

2. Various IRS officials have informally noted that the IRS will not extend the July 1 start of FATCA withholding on certain types of U.S. source income, such as dividends and interest.

3. The IRS will be publishing FFI lists every month following the First List. The second FFI list will be published on July 1, 2014, and the deadline to be included on such second list is June 3. However, our view is that it is preferable for an FFI to be included on the First List so as to avoid any inadvertent withholding that might occur shortly after July 1, 2014.

4. The IRS has provided in guidance that FFIs eligible for the benefit of IGAs do not need to register and obtain a GIIN prior to January 1, 2015. In practice, however, a withholding agent may be unwilling to rely on this guidance after July 1, 2014. Also, note that the IRS has recently expanded the list of jurisdictions deemed to have entered into IGAs with the United States to include jurisdictions that have not yet executed such agreements, with the list now including 48 countries. For more information, view IRS Announcement 2014-17 at <http://www.irs.gov/pub/irs-drop/a-14-17.pdf>.



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