

CLIENT MEMORANDUM

Six-Month Delay of FATCA Deadlines

July 16, 2013

AUTHOR

Joseph A. Riley

On July 12, 2013, the U.S. Internal Revenue Service released Notice 2013-43 (“the Notice”), revising the implementation timeline for the Foreign Account Tax Compliance Act (“FATCA”) provisions of the 2010 HIRE Act.¹ Several key effective dates are delayed six months. The Notice also provides additional guidance for jurisdictions that have entered into FATCA-related intergovernmental agreements (“IGAs”) but that have not yet brought those IGAs into force. The Notice indicates that the U.S. Department of the Treasury and the IRS will provide a list of jurisdictions that will be treated as having an IGA in effect for FATCA purposes, even if an applicable IGA has not entered into force.

¹ Please see the Willkie Farr & Gallagher LLP Client Memoranda, “Status of FATCA Intergovernmental Agreements” (November 16, 2012), available [here](#), “Internal Revenue Service Revises Timelines For FATCA Implementation In Announcement 2012-42” (November 15, 2012), available [here](#), “IRS Releases Proposed FATCA Regulations” (February 15, 2012), available [here](#), “IRS Releases Timeline For Implementing FATCA, Including Delaying The Deadline Until 2014 For Foreign Financial Institutions’ Compliance With Certain Provisions” (August 4, 2011), available [here](#), and “HIRE Act’s Effects on Investment Funds” (March 25, 2010), available [here](#).

Six-Month Delay of FATCA Deadlines

Continued

FATCA Withholding. FATCA-required withholding on certain payments, required to begin January 1, 2014 under the final regulations, is now delayed until July 1, 2014. Also, the date for the grandfathering of outstanding obligations has been moved from January 1, 2014 to July 1, 2014, meaning that obligations outstanding as of July 1, 2014, and associated collateral, will be “grandfathered obligations” for FATCA purposes. The Notice does not change the projected 2017 start of FATCA-required withholding on gross proceeds from certain U.S.-source transactions and on “passthru payments,” which are non-U.S. payments “attributable” to other, U.S.-source, payments and are the subject of future regulations. Withholding agents will not need to verify the Global Intermediary Identification Numbers (“GIINs”), which act as FATCA identification numbers, of foreign (i.e., non-U.S.) financial institutions (“FFIs”) in Model 1 IGA jurisdictions until January 1, 2015. The Notice explains that this postponement is to allow Model 1 IGA FFIs additional time to register and obtain a GIIN to make sure they are listed as “participating” FFIs on the IRS FATCA website before January 1, 2015.

FATCA Registration. The IRS FATCA on-line registration website, originally scheduled to be open this month, is now projected to open in August 2013. At that time, an FFI will be able to log in and input information for itself and its branch operations, and for other members of its expanded affiliated group, if applicable. All information will be saved automatically on the IRS system, and it is anticipated that an FFI will be able to modify or add information on the system from August 19, 2013 until the date that the FFI finalizes and submits its information. An FFI will be able to finalize and submit its registration on or after January 1, 2014. The IRS anticipates that FFIs will need to finalize their registration by April 25, 2014 to be included on the first list of “participating” FFIs, scheduled to be released by June 2, 2014. GIINs will be issued as FFI registrations are finalized in 2014. No GIINs will be issued in 2013. The FFI Agreement of an FFI that registers with the IRS and receives a GIIN before June 30, 2014 will have an effective date of June 30, 2014.

Account Opening Procedures. The deadline for FFIs to establish new account opening procedures is delayed from January 1, 2014 to the later of July 1, 2014 or the effective date of the FFI's FFI Agreement. Similarly, the definitions of “preexisting obligation” in the FATCA regulations and of “preexisting account” in the model IGAs will be modified to include accounts, instruments or contracts that are maintained, executed or issued and outstanding as of July 1, 2014 (or, in the case of FFIs, the later of July 1, 2014 or the effective date of its FFI Agreement).

Account Review Deadlines. The deadlines for completion of due diligence on preexisting accounts are postponed for six additional months. For example, if under the previous timeline an FFI had to document all of its prima facie FFI accountholders by June 30, 2014, its new deadline will be December 31, 2014. For purposes of the special rules for low- or high-value accounts, the account balance or value will first be measured as of June 30, 2014. The annual retesting of low-value accounts (to determine if the account balance or value has increased above \$1 million, and is therefore subject to the enhanced diligence review) will begin as of the end of 2015. In other words, account balance or value will be tested on June 30, 2014, and then not again until December 31, 2015 (unless there is a change in circumstances with respect to the account). The six-month postponement for due diligence will also apply to FFIs in IGA jurisdictions.

Six-Month Delay of FATCA Deadlines

Continued

FFI Reporting. FFIs will be required to report on U.S. accounts for calendar year 2014 no later than March 31, 2015. Reporting is no longer required for calendar year 2013. FFIs in IGA jurisdictions will also be exempt from reporting for calendar year 2013.

Other Extensions. Withholding certificates (e.g., Forms W-8) that would otherwise have expired on December 31, 2013 will instead expire on June 30, 2014 (barring a change in circumstances that would render the withholding certificate otherwise incorrect or unreliable). The Notice does not provide a timeline for when new Forms W-9 or W-8 (i.e., including a representation of FATCA status and GIIN, if applicable) will be finalized. All qualified intermediary, withholding partnership, or withholding trust agreements that would otherwise expire on December 31, 2013 will be automatically extended until June 30, 2014. Under previous guidance, special foreign-targeted registered obligation rules were expected to expire on December 31, 2013. These special rules have been extended, and will be available for use for offshore debt issuances issued before July 1, 2014.

IGA Jurisdictions. The U.S. Treasury has established a website that will keep a list of jurisdictions that will be treated as having an IGA in effect. This list will include jurisdictions that have signed an IGA, but have not yet brought it into force. FFIs in those jurisdictions will be able to register as compliant FFIs on the IRS registration website.²

If you have any questions regarding this memorandum, please contact Joseph A. Riley (212 728-8715, jriley@willkie.com) or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Paris, London, Milan, Rome, Frankfurt and Brussels. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

July 16, 2013

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Copyright © 2013 Willkie Farr & Gallagher LLP.

² The appropriate page at the U.S. Treasury website is found at the following address: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>