

## CLIENT MEMORANDUM

### FATCA: IRS Notice 2014-33 Provides That Certain “Preexisting Obligation” Dates Will Be Shifted to December 31, 2014; That 2014 and 2015 to be “Transition Period” for Enforcement for Certain Rules; and Certain Other FATCA Changes

May 2, 2014

#### AUTHOR

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On May 2, 2014, the Internal Revenue Service released [Notice 2014-33](#) (the “Notice”) regarding the Foreign Account Tax Compliance Act (“FATCA”) to announce certain forthcoming FATCA rule changes. Until such regulations are issued, taxpayers may rely on the provisions of the Notice itself.

The Notice provides that the FATCA regulations will be amended so as to allow a withholding agent or foreign financial institution (“FFI”) to treat an “obligation” (which generally also includes for FATCA purposes an equity interest, an account or other instrument) that is held by an entity and that is issued, opened, or executed on or after July 1, 2014, and before January 1, 2015, as a “preexisting obligation” for purposes of the applicable FATCA due diligence, withholding, and reporting requirements. Such amendments will apply only to obligations held by entities and not to those held by individuals.

According to the Notice, the years 2014 and 2015 will be regarded as a “transition period” for purposes of IRS enforcement and administration of FATCA due diligence, reporting, and withholding provisions and other related provisions to the extent those rules were modified by temporary FATCA coordination regulations released in February 2014. With respect to this transition period, the IRS “will take into account” the extent to which an FFI, or other foreign entity or U.S. or non-U.S. withholding agent has made “good faith efforts” to comply with the requirements of the FATCA regulations and the temporary coordination regulations. According to the Notice, an entity that has not made such good

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faith efforts will not be given any relief from IRS enforcement during the transition period. Further, the IRS will not regard calendar years 2014 and 2015 as a transition period regarding the requirements of FATCA-related withholding tax rules not modified by the temporary FATCA coordination regulations.

The Notice also provides that the Treasury Department will update in a similar fashion the applicable due diligence procedures outlined in the FATCA Model 1 and Model 2 intergovernmental agreements, so as to make corresponding deadlines coincide, and to make certain other amendments. The Notice includes additional FATCA guidance regarding branches and disregarded entities, provides for a change in certain standards of knowledge for withholding agents for accounts documented before July 1, 2014, and revises for certain FATCA purposes the definition of a “reasonable explanation” of foreign status.

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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.

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