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Top ranking U.S. Treasury official provides insight on issues affecting the implementation of FATCA

The Foreign Account Tax Compliance Act (FATCA) is expected to have a pervasive impact on many financial institutions organized in the U.S. and globally. Although FATCA became law in 2010, certain provisions are scheduled to be effective beginning in 2013, with some provisions scheduled to take effect in 2014 and 2015. It is anticipated that FATCA will present challenging implementation issues that must be addressed in a compressed time frame.

Broadly speaking, FATCA introduces three basic requirements to financial institutions -- enhanced due diligence on account owners, expanded information reporting, and potential withholding tax on U.S. source income and other payments

Much of the implementation issues that FATCA presents will be addressed in upcoming proposed regulations that are expected to be released shortly (perhaps as early as next week). To date, the U.S. Treasury Department and the IRS have provided directional guidance on the implementation of FATCA in the form of notices, but proposed regulations have not yet been published.

On January 24, 2012, the Treasury Department's Acting Assistant Secretary for Tax Policy Emily McMahon provided insight on the upcoming FATCA regulations at the New York State Bar Association Annual Meeting. Some of Ms. McMahon's notable remarks include the following:

- Status of Proposed Regulations. The proposed regulations are in the final stages of clearance at the Treasury Department and the IRS.



- **Review of Pre-Existing Individual Accounts.** To minimize the burden associated with the review of pre-existing individual accounts, the proposed regulations will provide for:
 - Higher dollar thresholds for determining which accounts are subject to review; and
 - More limited scope of manual review of individual account records.
- **Review of Pre-Existing Entity Accounts.** For pre-existing entity accounts, the proposed regulations will focus a review on passive investment entities with significant balances, and permit substantial reliance on documentation previously collected during account opening procedures.
- **Deemed-Compliant Status.** To further focus FATCA implementation efforts on high-risk institutions, the proposed regulations will provide for expanded categories of financial institutions that will be treated as "deemed-compliant."
- **Anti-money laundering and Know-Your-Customer Rules.** To the extent possible, the proposed regulations will seek to align the account review required under FATCA with procedures that a financial institution already follows to comply with anti-money laundering and know-your-customer rules.

A full text of Ms. McMahon's prepared speech can be found at
<http://www.treasury.gov/press-center/press-releases/Pages/tg1399.aspx>.

When the Treasury Department and the IRS release the proposed regulations, PwC will provide its analysis in future Global IRW Newsbriefs.

For more information, please do not hesitate to contact:

Dominick Dell'Imperio (646) 471-2386 dominick.dellimperio@us.pwc.com

Jon Lakritz (646) 471-2259 jon.w.lakritz@us.pwc.com

Candace Ewell (202) 312-7694 candace.b.ewell@us.pwc.com

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