

IRS Hot Topics

A Washington National Tax Services (WNTS)
Publication

November 6, 2012

Changes in the IRS withholding program

As part of the increasing efforts of the Internal Revenue Service (IRS) to identify and address noncompliance with US information reporting and withholding requirements associated with certain US source payments made to non-US persons, the IRS Large Business and International (LB&I) division has created a new 'Withholding Territory' as part of its International Business Compliance program effective October 24, 2012.

Generally, a withholding agent is required to withhold a 30 percent tax on certain payments made to a foreign person. This rate of withholding can be reduced if valid documentation (Forms W-8 and W-9 generally) is obtained that certifies that a lower rate applies either by operation of the Internal Revenue Code or a tax treaty between the foreign person's country of residence and the United States. This can be an area of high risk for companies because compliance often requires oversight and execution by

more than one function in a company. Mitigating this risk requires large businesses to identify the areas within their organization that make these payments, establish clear and specific policy and procedures for ensuring compliance, and develop strong oversight of the functions that make the payments.

New Withholding Territory

The new Withholding Territory will cover seven regions with David Oyler as the territory manager. Mr. Oyler was formerly an International Territory Manager and is located in Chicago. The current withholding agent group located in New York City will remain and continue to comprise two separate groups focused on US withholding agents and the Qualified Intermediary program, respectively.

The remaining five regions are as follows:

- Chicago, Illinois
- Edison, New Jersey
- Farmers Branch, Texas
- Plantation, Florida
- Laguna Niguel, California

Each of the new regions will provide geographical coverage similar to the current footprint for the LB&I industries. The revenue agents in these groups were selected both from within and outside the IRS and have received extensive training on both information reporting and withholding and other relevant international tax issues.

PwC observation

It is anticipated that the specialized personnel within this new Withholding Territory will play a key role in the administration of compliance initiatives associated with the Foreign Account Tax Compliance Act (FATCA). FATCA applies to similar payments and payees that are the initial focus of enforcement for the Withholding Territory.

Potential impact on examinations

Concurrent with the formation of this new territory, LB&I has implemented a requirement for new income tax return examinations, which mandates

a referral to the Withholding Territory to ensure that withholding issues are properly considered during an examination. The Withholding Territory will be responsible for handling voluntary disclosure submissions. The Withholding Territory will also work to develop compliance filters that can be routinely applied in the risk assessment of returns to identify returns that have potential withholding issues.

PwC observation

When the Internal Revenue Manual section was released, the IRS indicated that it was also employing a program to match Form 5471 (Information Return of United States Persons with Respect to Certain Foreign Corporations) and Form 5472 (Information Return of a 25% Foreign-Owned Corporation) with the Form 1042 which report US source payments and any associated withholding to non-US person. This program may be the source for additional examination inventory.

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