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By Electronic Delivery

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RE: FATCA Proposed Regulations

Dear Ms. Corwin, Mr. Danilack, and Mr. Musher:

The Investment Company Institute[1] strongly supports administrable rules that implement, consistent with Congressional intent, the Chapter 4 reporting and withholding rules.[2] The progress made by the Proposed Regulations[3] in developing administrable rules is commendable. The

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.3 trillion and serve over 90 million shareholders.

[2] This letter refers to Chapter 4's rules as "FATCA reporting" and "FATCA withholding" rules because they first were included in legislation known as the Foreign Account Tax Compliance Act ("FATCA").

[3] http://www.irs.gov/pub/newsroom/reg-121647-10.pdf.

proposals made in this letter, we submit, would enhance both the effectiveness and the administrability of the FATCA reporting regime.

I. Introduction

Our members – investment companies registered for sale in the U.S. under the Investment Company Act of 1940 (the "1940 Act") and the shareholders in 1940-Act registered funds[4] – are impacted both directly and indirectly by FATCA. The direct impact arises from those fund shareholders treated under FATCA as foreign financial institutions ("FFIs"), non-financial foreign entities ("NFFEs"), or foreign persons. The indirect impact arises primarily from concerns that foreign governments might adopt FATCA-like rules for U.S. funds investing in their markets. The Joint Statement issued on February 8 by the U.S., France, Italy, Germany, Spain, and the United Kingdom, while a positive development on many levels (and one we support strongly), arguably increases the likelihood of this result. For these reasons, and others, we have a strong interest in continuing to support your effort to develop administrable rules. The time that you already have spent with us and others on these issues is appreciated greatly.

This letter, unlike our detailed comments on Notice 2011-34,[5] focus on only a few issues. First, and most importantly, we urge that all amounts attributable to a U.S. fund be treated as having a U.S. source, at the fund's election, only to the extent of the fund's investments in U.S.-source assets. The substantial delay in imposing withholding on foreign passthru payments, while granted for sound policy reasons and appreciated greatly by foreign funds, exacerbates exponentially the competitive concerns that we raised previously.

Second, we suggest several changes to the customer documentation requirements. Our proposals will enhance administrability without diminishing compliance.

Third, we suggest an alternative approach for improving further on the many positive changes made by the Proposed Regulations in the treatment of retirement accounts. Specifically, the Final Regulations should state that, except to the extent provided by the Secretary, any retirement plan organized under a country's laws for the principal purpose of saving for retirement will be eligible for treatment as a certified deemed compliant FFI, will be treated as an exempt beneficial owner, and will be excluded from the definition of financial account

Finally, we suggest additional transition relief. Under our proposal, FATCA's requirements would begin to apply no sooner than one full calendar year after the FATCA regulations are finalized.

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[4] 15 U.S.C. §§ 80a-1 *et seq.*

[5] *See* ICI Letter on Notice 2011-34, dated June 6, 2011.

II. RIC Withholdable Payments

A. Background

The ICI's June 6, 2011 comment letter on Notice 2011-34 discussed in detail the organization and operation of U.S. funds that are registered under the 1940 Act and are treated for U.S. tax purposes as regulated investment companies ("RICs").[6] Rather than repeat those details here, that portion of the June 6 letter is included for your reference as Attachment A.

B. A RIC's Withholdable Payment Amount Should be Based Upon Its Underlying Assets

1. *The Regulations Place U.S. Funds at a Substantial Competitive Disadvantage*

The U.S. industry has only one RIC-specific concern with FATCA. This concern, however, involves a significant competitive disadvantage – and one that is exacerbated substantially by the Proposed Regulations – for those U.S. funds (such as exchange-traded funds) that are marketed abroad. Specifically, the U.S. industry is concerned that all amounts attributable to a U.S. fund apparently[7] are treated as generating 100 percent U.S.-source payments irrespective of the fund's underlying portfolio investments.

Our competitive concern is that participating FFIs ("PFFIs") that are distributing both U.S. and non-U.S. funds will encourage foreign investors to invest in non-U.S. funds to improve their customer experience by reducing the *possibility* that FATCA withholding will be imposed on them should documentation deficiencies develop. For example, if the PFFI offers two funds investing exclusively in Asia, the PFFI may advise foreign investors to invest in the non-U.S. fund (for which the foreign passthru payment percentage will be zero) rather than in the U.S. fund (for which the withholdable payment/passthru payment percentage will be 100 percent). Concerns about FATCA might lead to this recommendation even when the U.S. fund has lower fees and better performance.

This concern is exacerbated substantially by the many-year delay provided by the Proposed Regulations before any withholding is imposed on payments made by a foreign fund to a recalcitrant account holder. The Proposed Regulations, as you know, do not define the term "foreign passthru payment" and delay withholding on foreign passthru payments until at least 2017.

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[6] Subchapter M of the Internal Revenue Code (26 U.S.C. §§ 851 *et seq.*) provides the general tax regime for RICs.

[7] In one limited respect, the Proposed Regulations could be read to provide a "look-through" approach for determining the extent to which a RIC's payment is treated as having a U.S. source. Specifically, in determining the extent to which a RIC distribution would constitute "gross proceeds," Prop. Treas. Reg. § 1.1473-1(a)((3)(ii)(C) refers to Prop. Treas. Reg. § 1.1473-1(a)((3)(ii)(A); this latter provision states in part that "stock issued by a domestic corporation is property of a type that can produce dividends from sources within the United States *if* a dividend from such corporation would be from sources within the United States (emphasis added)."

The ICI, to be clear, does not object to the relief provided to foreign funds by the Proposed Regulations. We are quite concerned, however, that the competitive disadvantage discussed above has been exacerbated substantially by this delay. For example, because of the delayed imposition of withholding on foreign passthru payments, an individual with documentation issues who invests in a foreign fund investing exclusively in U.S. securities will have no possibility of FATCA withholding while full U.S. withholding would apply if the individual invested instead in a U.S. fund. This competitive disadvantage will last at least until 2017. For a U.S. fund holding non-U.S. assets, the disadvantage is perpetual.

C. Proposal

1. *In General*

To address these concerns, we request that RICs be provided with an election to treat the portion of any payment as withholdable based upon the portion of the RIC's underlying portfolio that consists of assets generating U.S.-source payments. Thus, for example, a RIC that invested only in non-U.S. securities and received income only from these non-U.S. securities would not make *any* withholdable payment and no payment attributable to this RIC (either a distribution made by this RIC or the proceeds from a disposition of an interest in this RIC) would be treated as a passthru payment.

RICs would *not* be required to make this election. Indeed, unless a RIC has both a significant foreign shareholder base and a portfolio with substantial non-U.S. investments, this election almost surely would not be made. For those RICs concerned about the competitive disadvantage, however, the election is quite important. FATCA should not be available for use by foreign distributors as a tool to encourage foreign investors seeking exposure to non-U.S. securities to purchase foreign, rather than U.S., funds holding comparable securities.

We submit that this proposal will not encourage tax evasion by U.S. persons. In all cases, RICs and PFFIs will be required to obtain information necessary to determine whether an accountholder is a U.S. person and to report fully on such persons. Moreover, the responsible officer of a PFFI will be required to certify that the FFI's management personnel do not encourage or assist U.S. persons in hiding their identities.

2. *Detailed Proposal*

As the Proposed Regulations did not discuss the calculation of a passthru payment percentage, our detailed proposal – provided in Attachment B to this letter – references Notice 2011-34's discussion of how a non-U.S. fund might calculate such a percentage. Because foreign funds will not be required to calculate a foreign passthru payment for several years, if ever, our suggestions are limited to U.S. funds.

III. Customer Documentation Issues

A. Introduction

Financial institutions expend considerable effort ensuring their compliance with all applicable customer identification requirements. This effort is compounded when information must be collected to satisfy different legal requirements,[8] when different types of information must be collected or reviewed,[9] when information collected may be relied upon (*i.e.,* is valid) for different time periods,[10] and when information must be retained for different time periods.[11]

Our comments below focus on three broad areas. First, we encourage efforts to maximize global harmonization of tax compliance and treaty relief measures and government-to-government information-sharing arrangements. Second, we support steps taken in the Proposed Regulations to reduce some of the more burdensome and novel customer identification requirements that were contained in the IRS Notices that preceded the Proposed Regulations. Third, we suggest several additional modifications to these rules to reduce further the burdens imposed on financial institutions without reducing FATCA's tax compliance objectives.

B. Maximizing Global Harmonization of Tax Compliance and Treaty Relief Measures

Financial institutions with a global focus – because they have cross-border activities or investments and/or a client base that is not purely domestic – have a very keen interest in customer identification rules and government-to-government information-sharing protocols that are as harmonized as possible across jurisdictions. The Organization for Economic Cooperation and Development ("OECD") for several years has brought together tax compliance experts from governments and financial institutions from around the globe to address these issues. Through the so-called TRACE project,[12] considerable progress has been made in developing a framework for harmonizing customer identification procedures (including a standardized investor self declaration

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[8] Customer information might be collected to comply with know-your-customer ("KYC") rules, anti-money-laundering ("AML") rules, domestic tax-reporting requirements, and/or requirements to establish eligibility for reduced withholding under an income tax treaty.

[9] For some purposes, one simple form of identification may be adequate. In other cases, detailed forms requiring certification of various attributes or qualifications for specific treatment may be required.

[10] Countries providing for investor self declarations ("ISDs") allow reliance upon the certifications for different periods. In some countries, reliance is permitted indefinitely for some types of certifications while other types of certifications must be renewed every few years.

[11] Because different countries have different statutes of limitations, it is inevitable that record retention periods will vary across jurisdictions.

[12] TRACE is an acronym for Tax Relief and Compliance Enhancement.

("ISD") that could be used on a reciprocal basis) and simplifying procedures for verifying to governments the status (*e.g.,* residence) of a financial institution's customers. The United States, as you know, has taken a leading role in this effort.

We strongly support the work of the TRACE project as a vehicle for providing enhanced tax relief and for improving tax compliance in an administrable manner that benefits both governments and business. We also recognize that the FATCA legislation imposes deadlines that prevent global harmonization in the near term. Consequently, our comments below recommend a number of ways in which the FATCA regulations should be modified to improve harmonization without reducing compliance.

The Joint Statement issued on February 8 by the United States, France, Germany, Italy, Spain, and the United Kingdom regarding an intergovernmental approach to FATCA implementation is an encouraging start. More work needs to be done. First, the dialogue between these six governments should be expanded promptly to include business representatives who have been working with these governments for several years on compliance enhancement. FATCA's requirements are so extensive, and affect financial institutions in so many different ways, that governments cannot possibly develop administrable rules without substantial business input. Second, as soon as feasible, the dialogue should be expanded further to include other governments and business representatives from these additional jurisdictions. A global solution requires a global dialogue. This dialogue should commence expeditiously.

C. Support for Progress Made in Proposed Regulations

The Proposed Regulations addressed in several significant ways the general business concern that the compliance burdens placed on business by the stringent due diligence requirements outweighed any associated compliance benefits by an overwhelming margin. One such example was elimination in the Proposed Regulations of the enhanced requirements that the IRS Notice would have imposed on "private banking accounts." We also support the new rules that impose substantial additional due diligence (in the absence of clear indicia of U.S. ownership) only on "high-balance" accounts (*e.g.,* $1 million, in many situations).

Two clarifications are needed. First, the Final Regulations should make absolutely clear that the $50,000 threshold below which an account need not be treated as a U.S. account applies to all accounts. The preamble to the Proposed Regulations states that preexisting individual accounts "with a balance or value that does not exceed $50,000 are exempt from review."[13] Several government officials, speaking on their own behalf at industry meetings, have restated the position taken in the

[13] Proposed Regulations, page 22.

preamble. The $50,000 exception to U.S. account status,[14] however, is limited to accounts that meet conditions A, B, and C – where condition A is that the account be "a depository account."[15]

Second, the Final Regulations should make absolutely clear that the $50,000 threshold applies for all FATCA purposes. As drafted, the Proposed Regulations provide that the $50,000 threshold is an exception to U.S. account status only for certain individual accounts of participating FFIs.[16] As the term U.S. account is used throughout the Proposed Regulations, including in the rules for restricted funds,[17] and as the term is defined only once, the definition surely was meant to apply for all purposes.

These drafting ambiguities should be corrected. As the preamble and several government officials effectively have acknowledged, accounts with small balances are of insufficient concern to warrant the due diligence requirements that FATCA otherwise would impose. It would be absurd if a depository account with a $50,000 balance was deemed to be of no concern while a securities account with a balance of $500 was of concern. The dollar threshold exception from U.S. account status should apply equally to all types of financial accounts and for all FATCA purposes.

D. Additional Specific Recommendations

1. *Reliance By Multiple Funds on a Single Form W-8*

We appreciate that all funds with a common manager (*e.g.,* funds that are part of the same "fund complex") may rely upon a W-8 provided to any fund in that complex.[18] To eliminate ambiguity, it would be helpful for the Final Regulations to note that this "shared W-8" rule – which already is provided for information reporting by U.S. funds[19] – applies to all funds in a complex regardless of whether the funds are organized in the same country.

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[14] *See* Prop. Treas. Reg. § 1.1471-5(a)(4)(i).

[15] The definition of depository account in Prop. Treas. Reg. § 1.1471-5(b)(3)(i) appears too narrow to include a securities account.

[16] Prop. Treas. Reg. § 1.1471-5(a)(4)(i)(B).

[17] Prop. Treas. Reg. § 1.1471-5(f)(1)(i)(D)(5).

[18] Prop. Treas. Reg. § 1.1471-3(c)(6)(vi).

[19] Treas. Reg. § 1.1441-1(e)(4)(ix)(3).

2. *Documentary Evidence Burdens for Certified Deemed Compliant FFIs*

We are very concerned about various FATCA requirements that effectively require financial institution employees to make tax compliance determinations based upon subjective requirements that may require specialized legal or financial training. The final FATCA regulations should limit a financial institution's due diligence obligations to making judgments based upon objective standards – such as verifying that a form has been signed or that appropriate boxes for claiming status have been checked.

The Proposed Regulations impose upon financial institutions the very substantial obligations both to collect and to examine documentary evidence to support investor certifications. Documents would be required, under the Proposed Regulations, from certified deemed compliant FFIs (such as nonregistering local banks) and from exempt beneficial owners (such as retirement funds, nonprofit organizations, and funds restricted to exempt beneficial owners). The types of documentary evidence that a firm's employees would be required to examine could include financial statements, annual reports, articles of incorporation, and government certifications.

Determining whether these documents support the status claimed may require both specialized training, as noted above, and command of a foreign language (since documentary evidence provided by a foreign client easily could be in a language that the firm's employee cannot read). The requirement to review financial statements, organizing documents, etc., can introduce substantial potential liability (including an obligation to pay all amounts that should have been collected from the investor whose documentation in fact did not support the status claimed) and will impose costs far exceeding any compliance benefits.

Consequently, we suggest that the Final Regulations eliminate the requirement to collect and review documentary evidence to support certifications made by certified deemed compliant FFIs and exempt beneficial owners. If the Final Regulations nevertheless require firms to collect documentary evidence, the firms should be permitted to rely upon the evidence provided unless the person reviewing the evidence knows or has reason to know that the evidence provided does not support the status claimed. Alternatively, the firms should be permitted in all cases to rely upon a letter from counsel attesting to the FFI's status. We also would support allowing certified deemed compliant FFIs to register with the IRS and receive an FFI-EIN.

3. *Other Documentary Issues*

We have six other document-related suggestions. First, financial institutions should be permitted to rely upon copies and electronic images (such as PDFs) of completed forms. Customer information today routinely is collected through electronic means. Electronic documents that financial services firm risk managers have determined are adequate for business purposes should be adequate for tax compliance purposes as well. Substantial burdens will be imposed if firms must

change their business practices and, for FATCA purposes only, collect only paper originals or faxed copies of investor certifications and/or supporting documentary evidence.

Second, any documentary evidence collected by a financial institution to support a W-8 should remain valid, and should not need to be "refreshed," even if (such as in the case of a passport) its validity expires before the W-8 itself expires. The additional burdens that will be placed upon financial institutions to monitor the expiration dates of both W-8s and underlying documentary evidence seem unlikely – absent knowledge or a reason to know that the investor's status has changed – to enhance tax compliance. Requiring that in all cases both the W-8 and the documentary evidence be valid currently could increase substantially the number of times that information must be solicited from clients. The more times a client is required to update information, the more times it is possible that the client inadvertently will fail to respond. Failure to respond will subject a client to withholding that otherwise would not have been imposed. Absent actual knowledge or a reason to know that a client's status has changed, a financial institution should be permitted to rely upon documentary evidence collected until the associated W-8 expires.

Third, strong consideration should be given to extending the time period for which W-8s and any documentary evidence collected only for FATCA purposes remain valid. One approach would be to permit continued reliance unless the financial institution knows or has reason to know that an investor's status may have changed. This "exception redocumentation" would limit the number of new recalcitrant account holders that would appear on a financial institution's books every time a W-8 or piece of documentary evidence expired without being updated.

Fourth, the documentation requirements for entities wholly owned by exempt beneficial owners should not obligate the entity to pass along the associated documentation for each underlying participant in the investment fund. Rather, a self-certification from the entity should suffice. This proposal is consistent with the certification requirements that apply to registered deemed compliant funds. If this requirement is not changed, withholding agents potentially will be asked to validate hundreds of pages of documentation relating to entities that are considered to pose no risk of tax evasion. We submit that a fund operating in this manner will have robust procedures in place to ensure that all participating investors are exempt. We suggest that the IRS may gain additional comfort on this issue if the entity attests to its procedures in a penalties of perjury statement that is associated with signing the W-8.

Fifth, we suggest that a U.S. phone number not be treated, in itself, as sufficient indicia of U.S. ownership. Non-U.S. investors have U.S. phone numbers for a wide range of personal reasons. As the number of such investors, we understand, is high, substantial additional compliance burdens will be imposed if a U.S. phone number, without more, is sufficient to trigger additional due diligence regarding an account.

Finally, we urge that financial institutions be required to check the continuing validity of an FFI-EIN no more frequently than annually. A clear and manageable standard is needed regarding a financial institution's obligation to review FFI-EINs that have been verified, upon receipt, as valid.

IV. Retirement Accounts

A. Introduction

We support the many significant improvements made by the Proposed Regulations to the treatment of retirement plans and accounts. The Proposed Regulations effectively recognize that the typical foreign retirement account does not provide U.S. persons with the ability to hide assets.

Special consideration must be given to retirement plans because they generally must be operated under their home-country laws for the primary purpose of preserving plan participants' retirement savings. The obligations that FATCA imposes on financial institutions to withhold in certain situations and to close accounts in others, however, are inconsistent with the laws under which these plans are organized.

We recognize the difficulty of crafting rules that distinguish effectively between vehicles that might allow for assets to be hidden and those that would not allow for such behavior. In the case of retirement plans and accounts that are organized under a country's laws for the principal purpose of saving for retirement, however, no line-drawing should be required. All such plans and accounts should be treated as deemed compliant, as exempt beneficial owners, or as excluded from the definition of financial account.

While many of the requirements contained in the Proposed Regulations (which are based on U.S. principles) are not problematic, a few requirements create significant, if not overwhelming, difficulties for certain types of retirement accounts. Each problematic area is discussed below. While we suggest targeted changes for some of these issues, we submit that a more comprehensive and effective solution should be provided. This solution would accommodate arrangements that are designed to meet specific local requirements and the financial needs of local workers.

Specifically, the Final Regulations should state that, except to the extent provided by the Secretary, any retirement plan organized under a country's laws for the principal purpose of saving for retirement will be eligible for treatment as a certified deemed compliant FFI, will be treated as an exempt beneficial owner, and will be excluded from the definition of financial account. Any concerns that certain types of plans should not be treated as eligible could be addressed by the "except to the extent provided" provision.

B. Specific Concerns

1. *The Five-Percent Participant Interest Limit*

The Proposed Regulations condition a retirement fund's eligibility for treatment – under one of the certified deemed compliant FFI categories[20] and one of the exempt beneficial owner categories[21] – on the fund not having a single beneficiary with a right to more than five percent of the entity's assets. In the case of certain large plans, this limitation creates an unnecessary compliance-monitoring requirement. In the case of certain smaller plans, this limitation can cause plans to flip in and out of qualification.

For certain large plans, the five-percent limit can impose a compliance monitoring requirement even when it is highly unlikely that a participant could have that significant an interest. The Chilean pension fund system, for example, requires mandatory contributions by approximately seven million individuals to fund mandatory pension accounts that are managed by one of six providers. Rather than force each of these providers to monitor account sizes, we suggest (as an alternative to the five-percent limit) that this requirement be satisfied if the assets are held solely for the beneficiary of a government-designed, broad-based pension system.

For certain smaller plans, the five-percent limit can preclude a plan from qualification in the first instance; the five-percent limit also can cause the plan to flip in and out of qualification as participants enter or leave the plan and/or as asset values of investment options change. To illustrate the difficulty of this well-intentioned test, consider the treatment of a very small plan that acquires a 20th participant. This plan no longer can qualify for treatment as a deemed compliant retirement plan under Prop. Treas. Reg. § 1,1471-5(f)(2)(ii)(A)(2) because it has more than 19 participants. The plan cannot satisfy the requirements for treatment as a deemed compliant retirement plan under Prop. Treas. Reg. § 1,1471-5(f)(2)(ii)(A)(1), however, unless each of the 20 participants has exactly the same five-percent interest in the plan's assets. Given our example of a 20th participant joining the plan, it is clear that at least one (and probably several) of the other plan participants will exceed the five-percent limit.

The difficulties created by the five-percent limit would be ameliorated at least somewhat if the limitation were increased to ten percent.

2. *Plans that Allow for Excess Contributions*

We appreciate greatly that the Proposed Regulations allow contributions of up to 100 percent of earned income without causing a plan to fail to qualify for the exception to the definition of

[20] Prop. Treas. Reg. §§ 1.1471-5(f)(2)(ii)(A)(1)(ii).

[21] Prop. Treas. Reg. §§ 1.1471-6(f)(1)(ii)(C).

financial account, for certified deemed compliant FFI status, or for exempt beneficial owner status.[22] Certain types of government-mandated plans, including some in Australian and Hong Kong, allow for contributions in certain instances that are not limited to earned income. Some others allow for "unused amounts" in one year to be rolled over to subsequent years. As we understand you will receive detailed submissions from several national associations, including those in Australia and Hong Kong (among others), we will not attempt to describe other countries' plans here. What is clear, however, is that these plans cannot be used by U.S. persons to hide assets. Hence, the limitation tied to earned income is both extremely problematic and unnecessary.

3. *Plans that Incur Annual Taxation*

We also appreciate other enhancements made by the Proposed Regulations to the ability of retirement plans to qualify as certified deemed compliant FFIs or as exempt beneficial owners. The requirement that a fund not be taxable,[23] we understand, is problematic for Australian superannuation funds – which are taxed at a concessionary rate of 15 percent. Because these funds will be addressed in the Australian association's submission, we will not attempt to describe those plans here. Clearly, some taxation of a retirement plan's income should not disqualify the plan from qualifying as a certified deemed compliant FFI or as an exempt beneficial owners.

4. *Arrangements to Earn Income for Benefit of Exempt Plans*

The definition of a retirement account should be expanded to include any arrangement to earn income for the benefit of one or more exempt pension plans. These arrangements currently are treated as exempt retirement accounts in the U.S.' income tax treaties with Canada and the United Kingdom and should be treated as such for FATCA purposes as well.

V. Transition Issues

We appreciate the transition relief provided by the Proposed Regulations. More transition relief, however, is necessary.

Funds and financial institutions will need sufficient time, after final FATCA regulations are issued, to comply with the new and detailed obligations that will be imposed on them. Firm's "FATCA teams" involve business executives, securities lawyers, tax lawyers and other tax compliance personnel, communications personnel, operations and computer systems personnel, and many other experts from offices around the globe. Their compliance efforts have been diligent and undertaken in

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[22] Prop. Treas. Reg. § 1.1471-5(b)(2)(i)(A) (exception to definition of financial account); Prop. Treas. Reg. § 1.1471-5(f)(2)(ii)(A)(1)(i) (certified deemed compliant FFI); and Prop. Treas. Reg. § 1.1471-6(f)(1)(ii)(B) (exempt beneficial owner).

[23] *See,* Prop. Treas. Reg. §§ 1.1471-5(f)(2)(ii)(A)(1)(iii) and 1.1471-6(f)(1)(ii)(D).

good faith. The Final Regulations, however, will need to be studied closely and implemented carefully.

To address these concerns, we request that FATCA's requirements apply no sooner than one full calendar year after the FATCA regulations are finalized. Under our proposal, finalization of the regulations in 2012 would cause FATCA's reporting requirements to apply beginning with payments made in calendar year 2014. Similarly, because the timeline provided by the Proposed Regulations calls for FATCA's withholding rules to apply beginning one calendar year after the FATCA reporting rules become effective, it would follow under our proposal that FATCA withholding would begin on January 1, 2015. All of the Proposed Regulations' other requirements, such as receiving customer documentation on specific forms, would apply no sooner than January 1, 2014.

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We would like to discuss this letter's proposals with you. The time spent already by you and your staffs with us and others is appreciated greatly. As the industry will need substantial lead-time to implement final FATCA regulations, I will contact you shortly to discuss the timing for our next meeting. Please feel free, at any point, to contact me for additional information or to discuss our proposals. My direct dial number is 202/326-5832. Many thanks.

Sincerely,

Keith Lawson
Senior Counsel – Tax Law

Attachments

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www.regulations.gov (IRS REG-121647-10)