

FATCA update: New FAQ on effective date of new WP and WT agreements

October 14, 2015

The Internal Revenue Service (IRS) on October 7, 2015 posted a new frequently asked question (FAQ) regarding the effective dates for agreements for withholding foreign partnerships (WPs) and withholding foreign trusts (WTs) under the Foreign Account Tax Compliance Act (FATCA). The new FAQ clarifies that entities applying for WP or WT status whose applications are submitted and approved on or after April 1 will be treated as having a WP or WT agreement with an effective date of January 1 of the year following the calendar year in which the application is submitted.

Observation: *The IRS position taken in the new FAQ will significantly impact entities electing to assume certain US tax withholding responsibilities by entering into WP or WT agreements. In particular, asset management companies that hold interests in lower tiered partnerships with flow through structures will need to address critical timing issues by carefully planning for when their partnerships will submit applications for WP or WT status in order to avoid liability for withholding taxes incurred*

or assumed before the agreement becomes effective under these rules. These companies also will need to consider whether the entity applying for WP or WT status expects to have FATCA reportable accounts between the dates the application is submitted and becomes effective.

However, if an entity submits an application for WP or WT status on or after April 1 and does not receive any reportable amounts between January 1 of the calendar year in which the WP or WT application is submitted and the date it is approved, the effective date of the WP or WT agreement will be the date that the entity is issued an employer identification number (WP-EIN), provided that it obtains a global intermediary identification number (GIIN) within 90 days of such approval (unless it is a retirement fund). This update to the effective date accommodates newly formed partnerships and trusts but continues with a narrow application period for pre-existing functioning entities.

Observation: *In order to mitigate potential risk associated with under withholding, WPs and WTs should implement internal controls requiring documentation and tracking of their applications as well as agreement effective dates.*

Partnerships and trusts that are considering WP or WT status should be cognizant of the timing rules provided in the new FAQ so that they can plan accordingly and avoid any surprises.

Let's talk

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