

US provides essential delay extensions and other leniencies related to FATCA

In brief

On 18th September 2015, the Internal Revenue Service (IRS) of US announced [Notice 2015-66](#). The announcement stipulates extension of deadlines and/or other leniencies relating to:

- FATCA Transitional Rules for Gross Proceeds and Foreign Passthru Payments
- FATCA Transitional Rules for Limited Branches, Limited FFIs, and Sponsored Entities
- Modification to Grandfathered Obligation Rule with Respect to Collateral
- Reporting of 2014 Information under a Model 1 IGA (Intergovernmental Agreement)

This new notice essentially defers the starting date for compliance and reporting by one to two years. We caution that although certain reporting obligations may be deferred, the reporting will still need to take place later for the original time period, and the deadline can be influenced by local authorities who themselves need time to comply. FATCA compliance can be complex, and we recommend you to consult with your advisor on all FATCA related matters.

FATCA Transitional Rules for Gross Proceeds and Foreign Passthru Payments

Participating Foreign Financial Institutions (FFI) in non-IGA countries are obliged to withhold withholdable payment. These payments are generally divided into three types:

- *Any payment of US source fixed, determinable, annual, and/or periodic (FDAP) income*
The withholding on this type of payments is already started since 1st July 2014.
- *Any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are US source FDAP income*
The withholding on this type of payment will occur after 31st December 2016.
- *Foreign passthru payment*
The definition of a foreign passthru payment itself is not yet defined by the FATCA law. The withholding on this type of payments doesn't occur before the later of 1st January 2017 or the date of publication in the Federal Register of final regulations defining foreign passthru payment.

Through Notice 2015-66, the Treasury has postponed the starting date for gross proceeds withholding from the original 1st January 2017 to the new starting date on 1st January 2019. The notice also delays the date for foreign passthru payment to 1st January 2019.

FATCA Transitional Rules for Limited Branches, Limited FFIs, and Sponsored Entities

Currently, there are 112 jurisdictions with agreements in substance to cooperate with FATCA requirement. Nevertheless, some other jurisdictions are still reluctant or openly reject to cooperate with FATCA. This condition exposes financial groups whose branches or members located in those uncooperative jurisdictions with the risk of not complying with FATCA requirements since FATCA obliges all of the financial group's branches and members to comply with FATCA regulations without exception.

Nevertheless, the Treasury gave leniency in the form of Limited Branches and Limited FFIs status, in which branches and members in uncooperative jurisdictions can have nonparticipating FFIs status without tainting their group and the respective members' FATCA status. This status is originally only available until 31st December 2015.

Notice 2015-66 provides further extension on this leniency by allowing Limited Branches and Limited FFIs to alter their status into "registration incomplete" for the year 2016. Even though the status is no longer a 'limited' one and Limited Branches and Limited FFIs must re-register their FATCA status after 31st December 2015, the advantage of not tainting the whole group's FATCA status still exists through this scheme until 31st December 2016.

Additionally, 31st December 2016 will also be the new deadline for Sponsored Entities to get their own Global Intermediary Identification Number (GIIN). Before this notice announced, Sponsored Entities can use their Sponsoring Entity's GIIN until 31st December 2015 only. On the other hand, withholding agents can rely on the respective Sponsoring Entity's GIIN as well during the assessment of its Sponsored Entities clients until 31st December 2016.

Modification to Grandfathered Obligation Rule with Respect to Collateral

Obligations that are outstanding on 1st July 2014 are classified as grandfathered obligations. Obligations are sometimes secured by collateral and the collateral sometimes secures multiple obligations simultaneously. Previously, collateral that secured both grandfathered obligation and non-grandfathered obligation must be pro-rated to find the proportionate amount that should be withheld. However, since it's

difficult to pro-rate it, the Treasury gives leniency through Notice 2015-66 by allowing financial institutions to withhold all parts of the collateral despite only some parts of the collateral secure the non-grandfathered obligations. This leniency also doesn't revoke the original pro-rate computation.

Additionally, the Treasury and the IRS agree as well that a substitute payment made with respect to a grandfathered obligation that has been posted as collateral should also be treated as a payment made under a grandfathered obligation, and therefore not subject to withholding. Thus, there is intention to amend the definition of grandfathered obligation to include any obligation that gives rise to substitute payments and that is created as a result of the payee posting collateral that is otherwise treated as a grandfathered obligation.

Reporting of 2014 Information under a Model 1 IGA

According to Notice 2015-66, jurisdictions that have not yet signed their IGA (this includes Indonesia) can extend their 2014 reporting year deadline from 30th September 2015 to 30th September 2016. Hence, in 30th September 2016, there will be two FATCA reports to be submitted: the 2014 FATCA report and the 2015 FATCA report.

This will give great relief for Indonesian regulators and financial institutions on preparing and implementing the FATCA reporting structure. Nevertheless, please note that the 30th September 2016 is the deadline for the local competent authority (in Indonesia's case, the Directorate General of Tax and the Financial Service Authority) to submit the report to the IRS. Hence, the deadline for financial institutions to submit FATCA report will be earlier than 30th September 2016 and this deadline will be decided by the local competent authority.

For jurisdictions with IGA in effect, the 30th September 2015 reporting deadline can also be postponed as long as the respective local competent authority notifies the IRS about their intention to postpone the reporting submission. This request may be approved by the IRS if there is assurance that the jurisdiction is making good faith efforts to exchange the information as soon as possible.

Let's talk

For more information how the issues may affect you, please contact:



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