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## IRS Issues Notice 2010-60 Clarifying Number of Issues Related to "HIRE" Act of 2010.

Today, the IRS issued Notice 2010-60 related to the March 18, 2010 Hiring Incentives to Restore Employment ("HIRE") Act of 2010. The HIRE Act imposed substantial reporting and withholding obligations on non-US financial institutions and certain other non-US entities in an effort to locate US account holders who are evading their US tax obligations.

The new Notice is intended to clarify a number of issues that have arisen in relation to reporting and withholding requirements for non-US financial institutions and other non-US entities. Highlights of the Notice are as follows:

- The HIRE Act granted the Treasury Department authorization to exempt certain entities from reporting/withholding as foreign financial institutions ("FFIs"). The Notice describes the Treasury Department's intention to issue regulations exempting the following entities, among others, from FFI treatment:
  - Traditional holding companies that hold interests in operating companies that are not themselves engaged in the financial services industry (but **not** including private equity funds, venture capital funds, or leveraged buyout

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funds);

- Non-US start-up companies investing capital for the purpose of establishing a business other than a financial institution for a period of 24 months after organization (but not including a venture fund or other start-up fund that invests in non-US entities);
  - Certain non-financial institutions that are in the process of reorganizing or emerging from bankruptcy;
  - An entity primarily engaged in hedging transactions for members of its affiliated group so long as the members of the affiliated group are not primarily financial institutions;
  - Insurance companies that issue policies without cash value such as property and casualty insurance and **term** life insurance (treatment of cash value life insurance and annuity product issuers is not provided);
  - “Small family trusts” settled by a single person for the sole benefit of his or her children (treatment of more complex trust structures is not provided);
  - Investment entities that obtain information about their owners and report to the IRS (under guidance to be issued) any owner who is a US person; and
  - Certain non-US retirement plans that qualify as such under local law, are sponsored by non-US employers and only allow US persons who are employees to contribute.
- Controlled foreign corporations are not exempted from the FFI treatment despite the fact that they are already subject to substantial information reporting.
- FFIs must determine which accounts are US accounts differently for pre-existing individual accounts, pre-existing entity accounts, new individual accounts and new entity accounts. The Notice provides

advice, as any such advice requires the consideration of the facts of the specific situation.

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step-by-step rules on how this should be accomplished.

- For certain pre-existing individual accounts, FFIs are required to identify, from electronically searchable data, any “indicia of potential US status” including:

- Whether an account holder has been identified as a US person;
- Whether the account holder has a US address;
- Whether the account holder’s place of birth is in the US;
- Whether the account lists an “in care of” address or PO box as its sole address;
- Whether a power of attorney or signature authority is granted to a person with a US address; and
- Whether the account is subject to standing directions to transfer funds to an account in the US.

- For new entity accounts, the FFI is required to determine whether they are US accounts from all available information – even if such information is not searchable electronically.

- The Notice describes the information that FFIs must report in relation to US accounts and notes that the FFI will be required to provide account related information to the IRS upon request **(including copies of account statements)**.

- The Notice requested comments (but did not provide guidance) on whether non-US collective investment schemes that prohibit US investors should be excepted from reporting/withholding.

The Notice will be followed by Treasury Department regulations to provide additional clarification.

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