

FATCA ALERT

US announces six month postponement to the implementation dates for FATCA - the impact on UK FIs

On 12 July, just one working day before the secure portal to be used by FFIs to register their status was due to go live, the US Internal Revenue Service ("IRS") issued Notice 2013-43 ("the Notice") announcing the delay to the implementation of FATCA. Whilst many FFIs will welcome the extra time to prepare for FATCA compliance, others will be reassessing their plans as projects are geared to move into the delivery phase. There are practical steps that FFIs can take to allow them to maintain the momentum of their projects and to reassess next steps.

The impact of the US regulations will now start to bite, from 1 July 2014 six months later than originally planned. In addition, the IRS has also announced that FFIs will not be required to report on accounts for the year ended 31 December 2013.

In summary, the main points that were covered by the Notice confirm that:

- the registration portal with the IRS will now open on 19 August 2013;
- during the period up to 31 December 2013, an FFI will be able to amend its status electronically through the portal even if it has already registered. This will provide FFIs with the opportunity to start inserting information and enable them to be better prepared to complete the registration process. FFIs with subsidiaries or branches in more than one country will also need to monitor when further IGAs are signed, so that they can ensure that the registration details are updated on the IRS portal where necessary;
- once 1 January 2014 has passed, FFIs can finalise their registration. In order to be included on the first published list of FFIs due on 2 June 2014, FFIs will need to have finalised their registration by 25 April 2014;
- for FFIs based in a country that has signed a "Model 1" Intergovernmental Agreement ("IGA"), they can choose to delay registration and continue to certify their FATCA status so that US withholding tax will not be applied to relevant payments made to them until 1 January 2015. After that date, such FFIs must register to obtain their Global Intermediary Identification Number ("GIIN") if they haven't already done so;
- QI withholding certificates that were due to expire on 31 December 2013, will be deemed to expire on 30 June 2014 - there will be no requirement to obtain a replacement certificate unless circumstances have changed;
- withholding by US withholding agents on US Fixed or Determinable, Annual or Periodic ("FDAP") income will not commence until 1 July 2014;
- in a welcome development, the IRS has announced that it will publish the list of countries that they regard as having signed but have yet to bring into force an IGA. They will regard these as IGA territories for the purposes of identifying the FATCA status of FFIs in that territory providing the country takes steps to introduce the necessary legislation within a "reasonable period of time". This provides the FFIs in these territories some protection from the risk of US withholding tax, allowing time for the local legislation to be put in place;
- the first FATCA reports in respect of the year ended 31 December 2014 will be due to be made to the IRS by 31 March 2015 under the US Final Regulations to implement FATCA ("the US Regulations"). There

will be no reporting for the 2013 calendar year under the US Regulations. However, any revised deadlines for FIs in the UK to report to HMRC have yet to be confirmed (see below). These timescales are extremely short in order for FFIs in "Model 2 IGA" territories and those adhering to the US Regulations in order to produce and acceptance test the reports before submission to the IRS.

DUE DILIGENCE

The account balance will now be ascertained as at 30 June 2014 rather than 31 December 2013. Where the account balance or value is US\$1m or less as at 30 June 2014, it will not require the enhanced paper file review unless the value subsequently exceeds US\$1m on 31 December 2015 or on that date in any subsequent calendar year.

IMPACT ON FI'S IN THE UK

Within the UK, Financial Institutions ("FI") are obliged to adhere to the UK legislation, which has been drafted on the basis that FATCA would be implemented on 1 January 2014. The IRS has confirmed that the "most favoured nation" clause within the UK IGA (and other IGAs which have already been signed) will provide for the same delay as that proposed for the US Regulations. Confirmation is awaited from HMRC with regard to the changes (if any) that are proposed to the draft UK regulations.

It is noted that the proposals for the Crown Dependency ("CD") agreements that were published on 26 June 2013 are also intended to be aligned with the original timeline for FATCA. HMRC are expected to comment on reporting requirements for the calendar year ended 31 December 2013 and the intention to obtain account information from Guernsey, Jersey and the Isle of Man for that year. This will also affect the agreements with the Overseas Territories that are currently being negotiated.

A policy statement has yet to be issued by HMRC to confirm if and how they intend to revise the draft UK legislation for both FATCA and the CD agreements, including whether there will be any changes to reporting deadlines in the UK.

The account due diligence procedures are also currently in draft UK legislation. Again, this will need to be amended to allow FIs to take advantage of the delay.

Until HMRC provide comment on the UK position, FIs may consider that it is prudent to keep to their original compliance timeframes and plans for the time being. Adopting the new customer take-on procedures with effect from 1 January 2014 should not cause any legislative breaches, providing that the relevant clause is passed in this year's Finance Act to allow FIs to record customer tax residency status. Similarly, mapping the status of other entities within your group would also be productive work

whilst clarity is awaited on the time frames for the due diligence exercise.

As the UK position is interlinked with other "FATCA like" agreements, an early announcement by HMRC will be welcomed. Ideally, flexibility in the timescales of the various agreements will provide FFIs with opportunity to apply the rules consistently within the group depending on their current state of readiness for compliance with FATCA.

For further details please contact:



Simon Airey

Head of Investigations

T +44 20 7153 7281

simon.airey@dlapiper.com



Jayne Newton

Tax Investigations Director

T +44 113 369 2811

T +44 20 7796 6370

jayne.newton@dlapiper.com



Rob Smith

Senior Tax Manager

T +44 20 7153 7664

robert.smith@dlapiper.com



Aileen Barry

Senior Consultant

M +44 7968 559249

aileen.barry@dlapiper.com

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper SCOTLAND LLP will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please speak to your usual DLA Piper contact on 08700 111 111.

www.dlapiper.com

DLA Piper UK LLP is authorised and regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is regulated by the Law Society of Scotland. Both are part of DLA Piper, a global law firm operating through various separate and distinct legal entities. For further information please refer to www.dlapiper.com

UK switchboard: +44 (0) 8700 111 111

Copyright ©2013 DLA Piper. All rights reserved. | July 13 | Ref: LDSDP/16113686