

Client Alert

Tax Practice Group

July 29, 2011

For more information, contact:

L. Wayne Pressgrove, Jr.
+1 404 572 2722
wpressgrove@kslaw.com

John C. Taylor
+44 20 7551 7553
jtaylor@kslaw.com

John K. Sweet
+1 212 827 4382
jsweet@kslaw.com

Matthew R. Servies
+1 404 572 2746
mservies@kslaw.com

King & Spalding
Atlanta

1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Tel: +1 404 572 4600
Fax: +1 404 572 5100

London

125 Old Broad Street
London EC2N 1AR
Tel: +44 20 7551 7500
Fax: +44 20 7551 7575

New York

1185 Avenue of the Americas
New York, NY 10038-4003
Tel: +1 212 556 2100
Fax: +1 212 556 2222

www.kslaw.com

Treasury Announces Delayed Implementation of FATCA Withholding and Reporting Requirements

In response to widespread concern about the feasibility of timely compliance, the Treasury Department released Notice 2011-53 on July 14, which gives foreign financial institutions (FFIs) and U.S. withholding agents temporary relief from the fast approaching January 1, 2013 deadline for implementing the withholding and reporting requirements enacted in the Foreign Account Tax Compliance Act (FATCA).

FATCA Background

FATCA was enacted as part of the 2010 Hiring Incentives to Restore Employment Act and is designed to target tax avoidance by U.S. taxpayers through the use of foreign accounts. FATCA is a complex law that imposes significant reporting and information gathering obligations on FFIs, which are enforced through new withholding taxes and substantial penalties. You can access our previous analysis of FATCA [here](#).

Participating FFIs will be required to enter into an agreement (FFI Agreement) with the IRS to report and withhold on U.S. accounts. Absent such FFI Agreement, FFIs will be subject to withholding on certain types of payments, including U.S. source fixed or determinable annual or periodic (FDAP) income and gross proceeds from the disposition of any property that can produce U.S. source FDAP such as interest or dividends.

The FFI Agreements will require an FFI to identify U.S. accounts, report certain information to the IRS regarding the U.S. accounts, and withhold a 30-percent tax on certain payments to non-participating FFIs and account holders who are unwilling to provide the required information. FATCA also imposes withholding on certain payments made to non-financial foreign entities (NFFEs) that do not provide certain information regarding their beneficial owners.

Notice 2011-53

Notice 2011-53 provides a “phased implementation” approach, under which FFIs and U.S. withholding agents are given additional time to implement the systems needed to comply with FATCA. The notice phases in FATCA implementation as follows:

Client Alert

- FFI Agreements must be entered into by June 30, 2013, to ensure that an FFI will be identified as a participating FFI in sufficient time to avoid withholding beginning on January 1, 2014.
 - Participating FFI status will prevent FFIs from being subject to withholding on payments made to them by U.S. withholding agents.
 - FFIs that do not enter into the FFI Agreement before June 30, 2013, but do so before January 1, 2014, will be considered participating FFIs for 2014; however, they may be subject to FATCA withholding due to the lack of time to identify them as participating FFIs before FATCA withholding begins on January 1, 2014. Presumably, the IRS will provide guidance that would allow these FFIs to obtain a refund for FATCA withholding on payments made to them during 2014.
- Participating FFIs' withholding obligations on U.S. source FDAP income paid to non-participating FFIs will begin on January 1, 2014, and withholding on all passthru payments (including on gross proceeds) will be fully phased in no earlier than January 1, 2015.
- FFI due diligence requirements for identifying new and pre-existing U.S. accounts (including private accounts with a minimum balance of \$500,000) will begin in 2013.
- Reporting of gross receipts and gross withdrawals or payments from U.S. accounts is not required for 2013; however, an FFI will be required to report any U.S. account holder identified by June 30, 2014 for which the FFI has not received certain required information.

While Notice 2011-53 provides significant relief for FFIs, the notice does not indicate whether a similar extension for the rules requiring withholding on payments made to NFFEs will be announced. Accordingly, it is uncertain whether withholding on such payments will begin on January 1, 2013.

Final regulations are planned for the summer of 2012, along with draft and final versions of the FFI agreements and reporting forms for use by withholding agents and participating FFIs.

* * *

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.