

FATCA Audits Likely to Begin in Early 2016

by Jaime Arora

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IRS audits of U.S. withholding agents to verify their compliance with the requirements of the Foreign Account Tax Compliance Act are likely to begin in early 2016, an IRS official said June 11.

It will take until then for the IRS to process, prepare, and pass on to the exam function the information the agency receives beginning in 2015, said Theodore Setzer, program manager (foreign payments), IRS Large Business and International Division. However, account holder information that foreign financial institutions report to the IRS in 2015 is likely to be available for examinations of 2014 returns, he said at the Executive Enterprise Institute's annual Forum on International Tax Withholding and Information Reporting in New York.

While it is not an audit per se, the compliance assurance process for FFIs also is likely to begin in 2016, Setzer added.

Setzer said there are several important indicators that the IRS may look for as it considers whether an entity has made the good-faith efforts required under the FATCA transition relief provided in Notice 2014-33, 2014-21 IRB 1033. Those indicators include the development of written compliance procedures and internal controls that show that the procedures have actually been followed, he said, adding that it would be risky for an institution to lack documentation to show IRS examiners. (Prior coverage.)

It is not in the government's interest to discourage institutions from attempting to comply, and they should not be dissuaded from documenting a policy or procedure even if they are unsure whether it falls perfectly within the four corners of the guidance, Setzer said.

Because Model 1 intergovernmental agreements leave compliance determinations to the host country, the foreign jurisdiction is not bound by the good-faith standard noted in Notice 2014-33, Setzer said. How-

ever, in the Model 2 IGA context, in which an FFI has direct reporting responsibilities to the United States, the standard in the notice would apply, he said.

The IRS will not levy penalties against an entity if it made a mistake in its initial FATCA registration and needs to go back and revise something, said Kimberly Schoenbacher, senior manager (foreign payments) at LB&I. However, if the IRS notices discernible patterns in an entity changing its information repeatedly or in a group whose members change their classifications and countries after receiving their global intermediary identification numbers, agents may wonder if they really made a good-faith effort the first time around, she said.

David Charlton of Deloitte LLP said withholding agents have put a lot of effort into having their systems ready for July 1 and that some are considering whether they can ignore the offered transition relief and begin withholding on accounts that do not have a documented chapter 4 status.

Setzer said his initial reaction to that approach is that the withholding would be improper and that the account holders could petition for withholding relief. He said he is unsure that the guidance in Notice 2014-33 should be considered elective just because it provides relief. Withholding agents should consider the adverse consequences of potential overwithholding, he said.

Some withholding agents have clients that are eager to complete a Form W-8BEN-E, "Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)," despite the current lack of instructions, Charlton said. He asked if withholding agents would be obligated to report on a client that identifies itself as a participating FFI if it notes that status on what seems to be a properly completed Form W-8BEN-E, or if they could ignore the chapter 4 status.

Setzer said that withholding agents should not ignore it and that they would be obligated to respect the chapter 4 classification. ◆

◆ *Jaime Arora, Tax Analysts.
E-mail: jarora@tax.org*