

IRS Notice 2015-66

Closing the distance

Global Financial Services Industry



IRS Notice 2015-66

On September 18, 2015, the IRS, in conjunction with the United States Department of the Treasury (“Treasury”), published **Notice 2015-66** announcing its intent to amend the chapter 4 regulations to extend the timeline for application of certain FATCA transitional rules and to provide guidance to jurisdictions for the exchange of information for tax year 2014.

Withholding on Gross Proceeds and Foreign Passthru Payments

The date for withholding on payments from the sale or other disposition of any property, if it is of a type that can produce interest or dividends that are US source FDAP income as defined under Treas. Reg. § 1.1473-1(a)(1), will be changed to payments made after December 31, 2018. This change delays obligations of US Withholding Agents (“USWAs”), participating Foreign Financial Institutions (“FFIs”), and withholding Qualified Intermediary (“QI”) FFIs to withhold on payments of gross proceeds made to recalcitrant account holders and non-participating FFIs which was originally set to begin on January 1, 2017.

Note: This change impacts both Forms 1042/1042-S and Form 8966 reporting, pushing the first Forms 1042/1042-S reporting of withholding on gross proceeds paid to Owner-Documented FFIs (“ODFFIs”) and Passive Non-Financial Foreign Entities (“NFFE”) to March 15, 2020, and the first Form 8966 reporting of gross proceeds to March 31, 2020.

Similarly, Treas. Reg. § 1.1471-5(h) regarding foreign passthru payments will be amended, delaying withholding on foreign passthru payments made to recalcitrant account holders or nonparticipating FFIs, until the later of January 1, 2019, or the date of publication in the Federal Register of final regulations defining the term “foreign passthru payment.”

Treatment of Collateral Securing Grandfathered Obligations

In response to comments by industry members, Treasury and the IRS have indicated an intent to amend Treas. Reg. § 1.1471-2(b) regarding the treatment of collateral securing grandfathered obligations outstanding as of July 1, 2014, in two respects. First, to ease the administrative burden

under the pro rata rule of Treas. Reg. §§ 1.1471-2(b)(2)(i)(A)(3) where collateral secures both grandfathered and non-grandfathered obligations, the pro rata rule will not be mandatorily imposed. This will allow the secured party to choose to apply withholding on all the collateral instead of just the amount that is not associated with a grandfathered obligation. Second, the amended regulations will allow for substitute payments made with respect to a grandfathered obligation posted as collateral to be treated as payments made under a grandfathered obligation.

Limited Branch and Limited FFI Status

Certain non-Intergovernmental Agreement (“non-IGA”) jurisdictions prohibit resident FFIs or FFI branches from complying with the terms of an FFI agreement. The classifications of “limited branch” and “limited FFI” under Treas. Reg. §§ 1.1471-1(b)(76-77) and 1471-4(e) were created to provide a temporary relief to entities located in those jurisdictions. The proposed amendment to these regulations will extend the availability of limited branch and limited FFI statuses from December 31, 2015, to December 31, 2016. The goals are to, first, provide additional time to jurisdictions to either enter into IGAs or amend local laws to allow FFIs to become participating or deemed-compliant FFIs and to, second, “provide FFIs and other stakeholders additional time to determine whether to continue operating in jurisdictions where limited branches or limited FFIs exist.” FFIs and branches that continue to operate in such jurisdictions after 2016 will jeopardize the chapter 4 status of the other participating FFIs and registered deemed-compliant FFIs (except FFIs covered by an IGA) in their group.

Note: After December 31, 2015, all limited branch and limited FFI registrations will be changed to “registration incomplete” status on the [FATCA Registration system](#). To reregister as limited branches or limited FFIs, the FFI must login and resubmit registrations after December 31, 2015.

Sponsored Entity Registration

The IRS has been developing an efficient, “streamlined” process for sponsored entity registration on the FATCA registration system and anticipates releasing the process and relevant guidance in the coming months. To provide sufficient time for sponsoring entities to complete these registrations, the deadline for registration of sponsored registered deemed-compliant FFIs and sponsored direct reporting NFFEs under Treas. Reg. §§ 1.1471-5(f) and 1.1472-1(c)(5) will be extended from January 1, 2016, to January 1, 2017. Treas. Reg. § 1.1471-3(d)(4) will also be amended to provide withholding agents additional time to collect sponsored entities’ GIINs. The Withholding Agents can rely on a withholding certificate from a sponsored registered deemed-compliant FFI or a sponsored direct reporting NFFE that contains only the sponsor’s GIIN until January 1, 2017. For payments made on or after January 1, 2017, they must obtain the actual GIIN of the sponsored FFI or direct reporting NFFE. The Withholding Agent can either collect a new withholding certificate from the payee that includes this GIIN, or, if they already have a withholding certificate with the sponsoring entity’s GIIN, they can collect an oral or written confirmation of the payee’s GIIN. If they choose the second method, they must retain a record of the information. The Withholding Agent has 90 days from the date they obtain the GIIN to verify its inclusion on the IRS list.

Exchange of Information for Tax Year 2014

Treasury, pursuant to its authority under IRC § 1471(b)(2)(B), intends to treat FFIs under Model 1 IGAs which have not been signed by September 30, 2015, as complying with FATCA, provided the partner jurisdiction of the respective FFI continues to “demonstrate firm resolve to bring the IGA into force and any information that would have been reportable under the IGA on September 30, 2015, is exchanged by September 30, 2016, together with any information that is reportable under the IGA on September 30, 2016.” Similarly, for jurisdictions with Models 1A or 1B IGAs for which the obligation to exchange is in effect, Treasury and the IRS understand that automatic exchange systems and necessary enacting legislation may not be in place to meet the information exchange deadline of September 30, 2015. In such cases, FFIs covered by an IGA will be treated as complying with FATCA “as long as the partner jurisdiction notifies the US competent authority before September 30, 2015, of the delay and provides assurances that the jurisdiction is making good faith efforts to exchange the information as soon as possible.”

Note: This position of treating 2014 and 2015 as a transition period does not affect the deadlines for FFIs to report information to partner jurisdictions, which remain governed by local law.

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