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Financial Institutions

IRS Notice Easing FATCA Compliance Gets High Marks From Tax Practitioners

A new IRS notice easing FATCA compliance will lighten the load of reporting U.S. accounts to the agency under the Foreign Account Tax Compliance Act, tax practitioners told Bloomberg BNA.

Overall, Notice 2016-8 is good news, they said in several interviews, although some said a couple of questions remain.

“Their focus on reducing the burden for FFIs is very positive,” Alan Granwell, of counsel with Sharp Partners PA, said Jan. 20. “There’s a lot of misinterpretation of these rules and there is so much confusion.”

Pre-Existing Accounts. In Notice 2016-8, the Internal Revenue Service answered many major questions raised by taxpayers on compliance with the law. FATCA requires foreign banks to tell the IRS about accounts held by U.S. persons or face a 30 percent withholding tax on their U.S.-source income in some cases (12 DTR G-2, 1/20/16).

In one big change, the notice gives foreign banks more time to certify whether their pre-existing accounts are owned by U.S. taxpayers and coordinates those deadlines with those for banks to certify their overall compliance with FATCA—pushing those deadlines to July 1, 2018, a change that won laurels from practitioners

In another, it permits withholding agents to rely on electronic Forms W-8 and W-9 collected by intermediaries and flow-through entities—a big issue on which many taxpayers have asked for clarity.

Form Change Seen Positive. The electronic form change is “incredibly helpful,” Laurie Hatten-Boyd, a principal in the Washington National Tax practice of KPMG LLP, said Jan. 20. “It’s all good news. This notice is one more example that the IRS and Treasury are listening to industry.”

Both she and Denise Hintzke, global FATCA tax leader at Deloitte Tax LLP, said the clarification on the Form W-8 would be welcomed by the fund industry.

The two practitioners said in separate interviews that withholding agents and custodians had been rejecting forms provided by intermediate entities that were actually in the stream of payments and handling the money, simply because the agents and custodians weren’t sure if they were allowed to accept them.

“There was nothing in the rules that said you couldn’t do it, but they weren’t comfortable because there was

nothing in the rules that said you could do it,” Hatten-Boyd said.

Funds Impacted. Hintzke said this question “has been causing a lot of issues across the industry,” and added it was truly impacting some of the big funds that were collecting documentation from their partners electronically.

The Deloitte practitioner said the W-8 change is probably “the best news” in Notice 2016-08.

Although the notice is welcome, John Staples, EY LLP’s global markets leader for information reporting and withholding, said Jan. 20 that questions remain on the treatment of “introducing brokers.” These individuals have investors as their clients and “place” them with a custodian that does the reporting and withholding on any payments made to them, Staples said.

Questions on ‘Introducing Brokers.’ These brokers, however, don’t “pay” their clients, the EY practitioner told Bloomberg BNA. Rather, the custodian makes those payments, meaning those brokers’ electronic systems might no longer be useful in the context of Forms W-8 being submitted electronically to the IRS.

Another question in the W-8 context, Staples said, is what needs to be on the “written statement” that the intermediary must submit to the withholding agent to say that their systems are in compliance with FATCA requirements. It isn’t clear whether the statement must be the complex, signed statement required by FATCA regulations or whether it can be less formal, Staples said.

Certification Deadlines. Practitioners generally praised the fact that the notice coordinated, and in some cases extended, deadlines for banks to submit both certifications of pre-existing accounts and FATCA compliance until July 1, 2018.

Granwell praised this change in particular. “The more you can simplify this by not having all different deadlines, the better,” he told Bloomberg BNA. “I get all kinds of questions about this.”

However, Staples said significant questions remain on a third type of certification required under FATCA—one that financial institutions must use to tell the IRS that they aren’t assisting U.S. persons to evade the law.

That third certification isn’t specifically mentioned in the notice, which simply cross-references existing regulations. If there is no change in the deadline for banks to tell the IRS they aren’t aiding tax evasion, that certification would be due in August 2016—what Staples called “a pretty major issue.”

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