

New IRS Guidance Establishing a Phased Implementation of the FATCA Regime

On July 14, 2011 the US Treasury Department published Notice 2011-53 (the "**Notice**") providing further guidance on certain aspects of the timeline for the implementation of the foreign account tax compliance regime under the Hiring Incentives to Restore Employment ("**HIRE**") Act of 2010 (also known as "**FATCA**").¹

The main highlights in the Notice include:

- **Phased Implementation of FATCA Withholding:** Withholding on US source payments will begin in 2014. Withholding on passthru payments and on disposition proceeds of US securities will begin in 2015.
- **Simplified Reporting Requirements:** First reporting is due by September 30, 2014. Simplified reporting requirements are generally available for 2014.
- **Clarification of the Scope of Grandfather Rule:** The Notice clarifies that the grandfather rule that exempts obligations outstanding by March 18, 2012 from the application of the FATCA regime applies to obligations issued by non-US issuers.
- **Timeline to Publish US Treasury Regulations:** Proposed regulations developing these rules are expected by December 31, 2011 and final regulations in the summer of 2012. However, draft model agreements between foreign financial institutions ("**FFIs**") and the US Internal Revenue Service (the "**IRS**") ("**FFI Agreements**") and related forms may not be issued until the summer of 2012.
- **Timeline for entering into FFI Agreements:** The IRS will begin accepting FFI applications through electronic submission no later than January 1, 2013. FFIs should enter into FFI Agreements before June 30, 2013 to ensure that the FFIs will be identified as compliant FFIs.
- **Timeline for Establishing Due Diligence Procedures:** An FFI will have at least one year from entering into its FFI Agreement to identify US and potentially US accounts among pre-existing accounts.
- **Computation and Publication of Passthru Percentage:** The obligation of participating FFIs to compute and publish their passthrough percentage will not begin before the first calendar quarter of 2014.

If you would like to know more about the subjects covered in this publication or our services, please contact:

[David Moldenhauer](#) +1 212 878 8384

[Avrohom Gelber](#) +1 212 878 3108

[Carolina Perez Lopez](#) +44 20 7006 8552

To email one of the above, please use
firstname.lastname@cliffordchance.com

Clifford Chance
31 West 52nd Street
New York, NY 10019-6131, USA
www.cliffordchance.com

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- **Extension of Withholding Agreements with the IRS:** Existing withholding agreements (such as a qualified intermediary agreement) of FFIs that would otherwise expire on December 31, 2012 will be automatically extended until December 31, 2013.

The foregoing is not intended or written to be used, and cannot be used by any person, for the purposes of avoiding US federal income tax penalties or to promote or market the matters addressed herein.

¹ These provisions are colloquially referred to as the FATCA provisions because they are based on prior, unenacted legislation, entitled the Foreign Account Tax Compliance Act. The tax provisions under the HIRE Act were previously described in [Foreign Tax Compliance Legislation Enacted by the United States](#). The earlier guidance was previously described in [First IRS Guidance on Upcoming Compliance Obligations of Non-US Banks, Financial Intermediaries and Investment Vehicles](#), [IRS Foreign Account Guidance Clarifies Alternatives for Non-US Funds](#) and [Supplemental IRS Guidance on Upcoming Compliance Obligations](#).

This client memorandum does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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