Akin Gump
STRAUSS HAUER & FELD LLP

Tax Alert

December 5, 2014

FATCA — Final Deadline to Obtain a GIIN for Model 1 IGA FFIs

Under transitional relief, certain non-U.S. investment funds, including Cayman Islands funds, that qualify as foreign financial institutions (FFIs), have been permitted to certify their status under the U.S. Foreign Account Tax Compliance Act (FATCA) without registering with the Internal Revenue Service (IRS) to obtain a Global Intermediary Identification Number (GIIN). As of January 1, 2015, this relief no longer applies, and, going forward, all FFIs should expect FATCA withholding agents to require withholding tax forms that include a GIIN. Current IRS instructions suggest that the cutoff date for inclusion on the first list with approved FFIs to be published in 2015 (and, therefore, the date by which a GIIN must have been obtained) is December 22, 2014. Since the number of registrations that will be received by the IRS, and also the processing times at year-end, are unclear, FFIs that have not yet obtained a GIIN should apply for a GIIN as soon as possible.

Enacted in 2010, FATCA represents a wide-ranging effort to increase compliance by U.S. taxpayers with U.S. federal tax reporting obligations. In particular, the FATCA regime seeks to compel non-U.S. entities to disclose the existence and identity of certain U.S. taxpayers who directly or indirectly own an interest in such entities. Prior to the enactment of FATCA, certain U.S. taxpayers would attempt to avoid U.S. tax reporting obligations and evade U.S. taxes by investing through non-U.S. entities in assets that produced income from U.S. sources.

In furtherance of its objectives, FATCA imposes a variety of diligence, withholding and reporting requirements on FFIs, which includes many master funds, offshore feeders and other investment vehicles commonly utilized by investment funds. FATCA is enforced through a 30 percent withholding tax on payments of certain types of U.S. source investment income made to FFIs and certain other non-U.S. entities that has been generally in effect since July 1, 2014, and that is expected to apply to payments of certain gross proceeds in the future. Payments potentially subject to FATCA withholding may include income that otherwise would be expected to be exempt from U.S. federal withholding tax, such as U.S. source portfolio interest, and dividends, interest or royalties with respect to which U.S. treaty benefits are claimed.

FATCA requires FFIs, among other duties, to register with the IRS and obtain a GIIN. FFIs are generally required to certify their FATCA-compliant status to withholding agents on a U.S. withholding tax form (typically, IRS Forms W-8BEN-E and W-8IMY) to avoid FATCA withholding. To facilitate the reporting of information under FATCA, the United States has entered into intergovernmental agreements (“IGAs”) with a substantial number of jurisdictions. FFIs located in a jurisdiction that has entered into a so-called Model 1 IGA with the United States (such as the Cayman Islands), or agreed in principle to enter into a Model 1 IGA, previously benefitted from transitional relief, which, as described above, is set to expire.

Contact Information

If you have any questions regarding this alert, FATCA or the United Kingdom's FATCA-inspired IGAs more generally, please contact:

Patrick B. Fenn
pfenn@akingump.com
+1 212.872.1040
New York

Stuart E. Leblang
sleblang@akingump.com
+1 212.872.1017
New York

Lewis J. Kweit
lkweit@akingump.com
+1 212.872.1041
New York

Joshua R. Williams
jrwilliams@akingump.com
+1 212.872.8014
New York

Jon Hanifan
jhanifan@akingump.com
+44 (0)20.7012.9708
London

Kevin Rowe
krowe@akingump.com
+1 212.872.8064
New York

Olivier De Moor
odemoor@akingump.com
+1 212.872.1032
New York

