

CLIENT LETTER

Foreign Account Reporting Updates Issued

Dear Client:

The IRS has issued additional relief for withholding agents, foreign financial institutions (FFIs) and other payors by extending the time required to document whether an entity that is a payee or account holder of a pre-January 1, 2015 account or obligation is a payee subject to withholding. Previous relief provided certain entity obligations and accounts issued, opened or executed on or after July 1, 2014 and before January 1, 2015 to be treated as preexisting obligations for purposes of the due diligence, withholding and reporting requirements.

The applicable regulations will be amended to reflect the current relief, but the provisions may be relied upon in the interim. Under this relief, a withholding agent may document the entity by December 31, 2014 if the payee is a prima facie FFI, or by June 30, 2016, in all other cases. Otherwise, the documentation must be completed by the earlier of (1) the date a withholdable payment is made, or (2) within 90 days of the date the obligation is issued, opened, or executed.

The “temporary coordination rules” previously issued provided additional U.S. indicia that can cause a withholding agent to have reason to know that a claim of foreign status by a direct account holder is unreliable or incorrect (reason to know standards). Unless the withholding agent is notified of a change in circumstance or reviews documentation that has a U.S. place of birth, the additional U.S. indicia do not apply to obligations that were documented before July 1, 2014. The current relief gives withholding agents additional time to apply the new procedures to document entity accounts that are opened on or after July 1, 2014 and before January 1, 2015.

The generalized standard for documentary evidence to establish a payee’s foreign status for amounts paid outside the United States was also changed by the previously issued temporary coordination rules. To allow more time for the modification of systems to implement the changes, a payor can continue to use, for accounts opened on or after July 1, 2014, and before January 1, 2015, the previous rules regarding the use of documentary evidence.

The IRS also issued several new and updated procedures and Frequently Asked Questions (FAQs) related to foreign account reporting:

Delinquent FBAR submissions. The IRS has updated its procedures for taxpayers who (1) have not filed a required FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), (2) are not under a civil examination or a criminal investigation by the IRS, and (3) have not already been contacted by the IRS about the delinquent FBARs.

These procedures are for individuals who do not need to use either the Offshore Voluntary Disclosure Program (OVDP) or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax. The FBARs in question must be filed

electronically (at). A reason for filing late must be selected on the cover page of the electronic form, and a statement must be included explaining why the FBARS are being filed late.

Penalties will not be imposed for failure to file the delinquent FBAR if the income from the foreign financial accounts was properly reported on a U.S. tax return, and the resulting tax was paid. However, if the taxpayer has previously been contacted regarding an income tax examination or a request for the delinquent returns, these procedures cannot be used.

Streamlined FBAR compliance: resident taxpayers. New streamlined compliance procedures were issued for resident U.S. taxpayers who failed to properly report a foreign financial asset, failed to file an FBAR and/or one or more international information returns with respect to the foreign financial assets as a result of nonwillful conduct. To be eligible, you must (1) file amended returns for each of the most recent 3 years for which the extended due date has passed, together with all required information returns; (2) for each of the most recent six years for which the FBAR due date has passed file any delinquent FBARs; and (3) pay a miscellaneous offshore penalty. The full amount of the tax, interest, and miscellaneous offshore penalty due should be remitted with the amended returns.

Streamlined FBAR compliance: nonresident taxpayers. The IRS has issued new streamlined procedures for U.S. taxpayers residing outside of the United States who have failed to report the income from and pay the tax on a foreign financial asset and failed to file an FBAR with respect to a foreign financial account and such failure did not result from willful conduct. Under the procedures, negligent, inadvertent or mistaken conduct as well as conduct that is the result of a good faith misunderstanding of the law's requirements is nonwillful.

These procedures also eliminate the risk assessment process associated with the 2012 compliance program. Taxpayers who submitted returns under the 2012 streamlined filing program before July 1, 2014 and have not already been notified of a high or low risk determination will not receive a risk determination and the returns will be processed without regard to any risk assessment. In addition, taxpayers who are eligible to use the new streamlined procedures and comply with all of the instructions in the procedures will not be subject to failure-to-file and failure-to-pay penalties, accuracy-related penalties, information return penalties, or FBAR penalties.

Delinquent international information return submissions. The IRS has issued instructions for taxpayers who do not need to use OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who: (1) have not filed one or more required international information returns; (2) have reasonable cause for not timely filing the information returns; (3) are not under a civil examination or a criminal investigation by the IRS; and (4) have not already been contacted by the IRS about the delinquent information returns. Qualified taxpayers should file the delinquent information returns with a statement of all facts establishing reasonable cause for the failure to file and certify that any entity for which the information returns are being filed was not engaged in tax evasion. If a reasonable cause statement is not attached to each delinquent information return filed, penalties may be assessed in accordance with existing procedures.

If you have questions about documenting a payee or account holder, or are unsure whether you qualify for any of the foreign account reporting procedures discussed above, please call our office at your earliest convenience.

Sincerely yours,

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