Cooley

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On July 12, 2013, the Treasury Department and the IRS released Notice 2013-43 (the "Notice") and an accompanying press release announcing, among other things, revised timelines for the implementation of the Foreign Account Tax Compliance Act ("FATCA"). The principal consequence of the Notice is that withholding under FATCA has been postponed for six months, to July 1, 2014.

Background

FATCA generally requires foreign financial institutions ("FFIs") and non-financial foreign entities ("NFFEs") to comply with certain due diligence and reporting requirements with respect to their U.S. accountholders and substantial U.S. owners, respectively. If an FFI or NFFE fails to comply with these requirements and is otherwise not excepted, exempted or deemed compliant by the applicable regulations, a 30% withholding tax will be imposed on U.S.-source interest, dividends, rents, and salaries (generally referred to as U.S.-source FDAP income) as well as gross proceeds from the sale of debt and equity instruments that produce U.S.-source FDAP income.

Because many foreign jurisdictions have laws that do not permit compliance with FATCA's reporting and withholding requirements, the Treasury Department is negotiating agreements with foreign governments to address these impediments. Two alternative intergovernmental agreements ("IGAs") have been developed. To date, IGAs have been signed by Denmark, Germany, Ireland, Japan, Mexico, Norway, Spain, Switzerland and the United Kingdom.

For additional background information on FATCA and the IGAs, please see our previously issued *Cooley Alert,* "Government Finalizes FATCA Regulations".

Impact of the Notice

The Final Regulations implementing FATCA, released on January 17, 2013, require FATCA withholding on payments of U.S.-source FDAP income to non-participating FFIs and NFFEs that fail to provide required certifications beginning on January 1, 2014. Comments to the Final Regulations expressed concern regarding the uncertainty that exists for FFIs and withholding agents as Treasury continues to negotiate IGAs with partner jurisdictions. Specifically, FFIs in jurisdictions engaging in these discussions have been unable to fully prepare for FATCA implementation without knowing whether their jurisdictions will conclude an IGA with the United States before the FATCA withholding deadline of January 1, 2014.

To address this uncertainty, the IRS announced in the Notice that the Final Regulations would be amended to implement a six-month delay in FATCA withholding on U.S.-source FDAP income to July 1, 2014. The Notice does not delay the effective date for withholding on gross proceeds, which is still slated to take effect on January 1, 2017.

Similarly, the Final Regulations will be amended to extend certain new account opening procedures, due diligence obligations for FFIs on "pre-existing obligations" and related "onboarding" procedures to July 1, 2014, harmonizing these dates with the new effective withholding date.

The Notice also announced that the FATCA registration online "portal" would be available for financial institutions on August 19, 2013 (the Preamble to the Final Regulations indicated that it would be available on July 15, 2013). This is the first date that financial institutions can register as participating FFIs or registered deemed-compliant FFIs through this online process. Certain other registration-related dates will be extended by six months (including the date that Global Intermediary Identification Numbers will be issued to certain FFIs and the date that FFIs must register with the IRS in order to ensure inclusion in the June 2014 IRS list of participating FFIs and registered deemed-compliant FFIs).

Finally, Treasury announced in the press release accompanying the Notice that it is in discussions with more

than 80 jurisdictions to negotiate and execute IGAs and that it will provide a list of jurisdictions that will be treated as having an IGA in effect even though such an IGA may not have entered into force as of July 1, 2014.

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Key Contacts

Aaron Pomeroy Colorado	apomeroy@cooley.com +1 720 566 4108

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