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Foreign Account Tax Compliance Act (FATCA) Developments

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The Internal Revenue Service ("IRS") has recently released final FATCA Regulations on January 17th, 2013. According to IRS officials, the Regulations provide a complete picture of the substantive requirements for Foreign Financial Institutions ("FFIs") under the yet-to-be-released FFI Agreements.

FATCA is a law designed to collect information relevant to U.S. taxpayers. It has broad application to both FFIs, U.S. individual taxpayers, U.S. citizens residing overseas, and almost all other foreign entities (i.e., non-U.S. entities) which are defined as NFFEs; see below. For FFIs, a 30 percent withholding tax will become applicable to so-called "withholdable payments", if the FFIs do not satisfy various due diligence and reporting requirements. Withholdable Payment: A withholdable payment includes i) payments of interest (including OID), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other FDAP income from U.S. sources, and ii) gross proceeds from the sale or other disposition of property that can produce U.S. source interests or dividends.

In short, the new Regulations:

- Delay FATCA withholding and reporting until January 1st, 2014;
- Coordinate FATCA and Intergovernmental Agreements reached between the IRS and foreign countries ;
- Increase the definitions and explanations of FATCA terms for further clarification; and
- Supersede all previous FATCA guidance issued by the IRS. Compliance with FATCA will entail an in-depth assessment of individual needs and multiple business decisions.

The Regulations and preamble are more than 500 pages long and very complex. Invariably, FFIs and Non Financial Foreign Entities ("NFFE") have little time to be prepared to comply with those complex rules set forth in the Regulations. Currently, the IRS is working to standardize and protect the information that will be exchanged with partner countries under the "extreme intensive exercise" that is FATCA. The compliance with FATCA must be done at latest on June 30th, 2013. An example of some, of many, timing requirements are as follows as to FFIs:

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FATCA Timeline

<u>2013</u> →	<p>June 30 "Limit" for a FFI to have a FATCA Agreement with the IRS.</p> <p>December 31st Last day for "preexisting accounts".</p>
<u>2014</u> →	<p>January 1st FATCA withholding commences on FDAP payments to non-participating FFIs, recalcitrant account holders.</p> <p>December 31st Due diligence must be finalized for pre-existing high-value individual accounts.</p>
<u>2015</u> →	<p>January 1st FATCA withholding on FDAP payments on pre-existing individual high-value accounts.</p> <p>March 15th Forms 1042 due from participating FFIs.</p> <p>March 31st First FATCA reporting of U.S. account holders by participating FFIs</p> <p>December 31st Completed due diligence for pre-existing accounts and non-high-value individual accounts</p>
<u>2016</u> →	<p>January 1st FATCA withholding on FDAP payments on individual non-high-value accounts.</p>
<u>2017</u> →	<p>January 1st FATCA withholding on gross proceeds from sale of U.S. assets begins. Possible: withholding on "passthru" payments.</p>

Procopio has a number of lawyers familiar with FATCA and have published various detailed articles regarding the law and its application.

Please contact any of our International Tax Team attorneys at Procopio; they will provide you with tailored professional solutions on FATCA or any other international tax topic.

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