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Final 1001 regulations for banks

by Daniel Mayo and Rowan Liu

The IRS issued new proposed regulations under § 871(m) this past December.[1] These proposed regulations withdrew the regulations that were proposed in 2012[2] in favor of a delta-based approach. The delta of an instrument is the ratio between the change in the fair market value (*FMV*) of the instrument to the change in the FMV of the referenced property.[3] The 2013 proposed regulations also expanded greatly the scope of instruments that are subject to § 871(m), covering, in addition to Notional Principal Contracts (NPCs), a new category of instruments referred to as equity-linked instruments (*ELIs*). ELIs are defined broadly to include any financial transaction that reference the value of one or more underlying U.S. equities, including forward contracts, futures contracts, options, exchange-traded notes, structured notes, debt instruments convertible into underlying securities, and debt instruments with payments linked to underlying securities.[4] An NPC or ELI with a delta of 0.70 or higher upon acquisition would be considered a specified NPC (*SNPC*)[5] or a specified ELI (*SELI*),[6] and any dividend equivalent payment (*DEP*) provided under such instruments would be sourced to the United States under § 871(m). Generally, an instrument is not retested for SNPC or SELI status after acquisition.[7] However, the delta of a SNPC or SELI may have to be recalculated throughout the life of the instrument for purposes of determining the amount of each DEP.[8] A broker/dealer that is party to the transaction, or the short party if both parties are or neither party is a broker/dealer, is responsible for determining whether § 871(m) applies and if so, the amount of any DEPs.[9] The determining party's decision generally is binding on all parties to the transaction and the withholding agent, but not on the IRS.[10] The new standard is proposed to be effective for payments made on or after January 1, 2016;[11] until then, the current four-factor test in § 871(m) applies.

By adopting a delta-based approach, the IRS intended to simplify the standard used to identify transactions with economics that are substantially similar to equity ownership. Further, the uniform application of a formula-based standard across all NPCs and ELIs offers withholding agents the ability to automate the process of identifying and withholding on covered instruments.[12] While the approach has generally been perceived as an improvement from the approach laid out in the 2012 proposed regulations, the new rules are nonetheless complex and nuanced. We expect there to be some changes to the proposed regulations before they are finalized, but the fundamental delta-based approach is not likely to be abandoned,

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1 2013-2 C.B. 837; 78 FR 73128 (Dec. 5, 2013). Unless otherwise indicated, all section and § references are to the Internal Revenue Code of 1986, as amended (the "*Code*"), and to the Treasury regulations promulgated thereunder.

2 2012-1 C.B. 487; 77 FR 3202 (Jan. 23, 2012).

3 Prop. Treas. Reg. § 1.871-15(g)(1).

4 Prop. Treas. Reg. § 1.871-15(a)(4).

5 Prop. Treas. Reg. § 1.871-15(d)(2).

6 Prop. Treas. Reg. § 1.871-15(e).

7 See discussion of the combination rule below for an exception to this general rule.

8 Prop. Treas. Reg. § 1.871-15(i)(1)(ii). The amount of DEPs with respect to a SNPC or SELI is calculated by multiplying the per share dividend of the underlying security by the number of shares referenced and the corresponding delta at the time the DEP is determined, which generally is the earlier of the ex-dividend date or the dividend record date.

9 Prop. Treas. Reg. § 1.871-15(o)(1).

10 Id.

11 Prop. Treas. Reg. § 1.871-15(d)(2) and (e). Even though there is no grandfathering for NPCs executed before January 1, 2016, the proposed regulations would apply only to ELIs that are issued on or after 90 days after final regulations are published in the Federal Register. *See* Notice 2014-14, 2014-13 I.R.B. 881 (March 4, 2014).

12 Preamble to 2013 Proposed Regulations, 78 FR at 73132.

though it may be changed around the margins. Below is a summary of the more complex aspects of the proposed regulations and some important takeaways that are of interest to international banks and their U.S. broker-dealer subsidiaries.

Combination rule

If a taxpayer takes long exposure on two or more transactions that reference the same U.S. equity or equities and the transactions are executed in connection with each other, then they would be treated under the proposed regulations as a single transaction for purposes of § 871(m).[13] Several aspects of this rule are worth noting.

First, the term "in connection with" is not defined in the proposed regulations.[14] Although several examples illustrate the rule,[15] withholding agents may have a difficult time determining whether two or more transactions should be viewed as having been executed "in connection with" one another and whether this is intended to be an objective or subjective standard.

Second, retesting of combined positions is required each time a long position is acquired in connection with an existing position that references the same underlying security.[16] The delta of each combined position is redetermined at the time of retesting. However, the stated purpose of the retest is to determine whether transactions should come within the ambit of § 871(m); it does not permit transactions that are subject to § 871(m) to exit the regime.[17] In other words, the combination rule is a one-way street and once an § 871(m) transaction, always an § 871(m) transaction.

Last, the combination rule is limited to long positions, effectively allowing for the addition of positive deltas, but not for the subtraction of negative ones. This treatment differs from the treatment of offsetting positions contained within a single instrument. In that case, positive and negative deltas are netted for purposes of determining whether the instrument is subject to § 871(m). Based on the public comments of one of the drafters of the proposed regulations, this disparate treatment appears to have been intentional.

Secondary trading of ELIs

Issuers of ELIs may unknowingly become a determining party or withholding agent if their instruments become subject to secondary trading. This means that issuers will be required to track the secondary market for their notes and other products and to calculate and store the delta and dividend equivalent amounts on all relevant days. Another challenge will be to design and implement withholding systems because withholding agents will no longer be able to rely on the CUSIP or ISIN to determine the withholding status of a particular transaction; rather, under § 871(m), the withholding status would depend on the delta of an instrument when acquired by a holder. Thus, identical economic transactions may be subject to different withholding tax treatment because the delta may equal or exceed 0.7 on some days and not on others. Secondary trading also affects certain convertible debt instruments because qualification for the portfolio interest exemption also would depend on the delta on acquisition – It is no longer a clean exemption.

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[13] Prop. Treas. Reg. § 1.871-15(l).

[14] The phrase "in connection with" has been defined broadly when applied to other sections of the Code. *See, e.g.*, *Snow v. Commissioner*, 416 U.S. 500, 502 (1974) (holding that research and experiment expenditures were deductible because incurred "in connection with" a trade or business even though the partnership had not been engaged in business when the loss incurred; Supreme Court found that Congress included the term "in connection with" to "dilute some of the conception of 'ordinary and necessary' business expense under I.R.C. §162(a)"); *Huntsman v. Commissioner*, 905 F.2d 1182, 1184-85 (8th Cir. 1990) (holding that debt incurred from the refinancing of a mortgage used to purchase a residence was incurred "in connection with" the purchase or improvement of a residence; Eighth Circuit concluded that Congress intended a "broad interpretation to be given" to the phrase because it was aware of the Supreme Court's interpretation in *Snow* when adopting the language).

[15] Prop. Treas. Reg. § 1.871-15(l)(6).

[16] Prop. Treas. Reg. § 1.871-15(l)(2).

[17] rop. Treas. Reg. § 1.871-15(l)(3).

Narrow definition of qualified index

A qualified index is treated under the proposed regulations as a single security that is not subject to § 871(m).[18] While there may not be a policy reason underlying this exception, it does appear to reflect the predominance of nontax motivations that are often present in derivatives referencing such indices. However, the proposed definition[19] for a qualified index appears to have been drafted too narrowly because it excludes some of the largest and most well-known public indices, including the S&P 500 and DJIA. While many practitioners have argued for relaxing the definition of a qualified index to achieve its purpose, there is evidence that some within government have argued for and continue to argue for eliminating this exception altogether in the final regulations.

Implicit dividend

Under the proposed regulations, a dividend-equivalent payment includes actual or estimated dividend payment that is explicitly taken into account or implicitly taken into account in computing one or more terms of an instrument (*e.g.*, interest rate, notional amount, purchase price). The concept of implicit dividend equivalents will be particularly hard for withholding agents to accommodate from a system's perspective because withholding will be required even though the instrument provid's for no payment of dividend equivalent amounts.

Exchange traded options

Exchange traded options are issued and acquired through clearing members of an options exchange, without the option purchaser or issuer knowing the identity of the other. Although the clearing members act exclusively as brokers and have no continuing economic stake in the options transaction, they may nonetheless be treated as a determining party and withholding agent under the proposed regulations.[20] This would require clearing members to develop and maintain systems that can calculate and track many of the data points needed to comply with the proposed regulations.

New York Bank and Corporate Franchise Tax Reform enacted

by Russ Levitt and Dave Turzewski

On March 31, 2014, New York Governor Andrew Cuomo signed A. 8559-D and S. 6359-D into law. These bills, which enact the tax changes included in the executive budget, provide an estimated $2 billion of income, estate, and property tax relief to affected residents and businesses. On the corporate tax side, the bills repeal the Article 32 banking franchise tax and substantially revise the Article 9-A general corporate franchise tax. Under the new regime, banks are subject to the revised Article 9-A tax. Details of the corporate tax reform are discussed below. Unless otherwise noted, all of the corporate tax changes are effective for tax years beginning on or after January 1, 2015. The changes do not apply for New York City corporate and banking tax purposes unless and until New York City enacts its own conforming legislation.

Expanded nexus standards

New York's Article 9-A corporate franchise tax is imposed on both domestic and foreign corporations for the privilege of exercising their corporate franchise (*i.e.*, the right to exist and do business in New York), doing business, employing capital, owning or leasing property, or maintaining an office in New York State. The budget bill adds

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18 Prop. Treas. Reg. § 1.871-15(k)(1).

19 Prop. Treas. Reg. § 1.871-15(k)(2).

20 Prop. Treas. Reg. § 1.1441-7(a)(3), *Ex.* 7.

"deriving receipts from activity" in New York to this list of nexus-creating activities. Specifically, a corporation will be considered "deriving receipts from activity" in New York if it has $1 million or more in receipts within New York (*i.e.*, included in the New York State apportionment factor numerator) under the budget bill's revised sourcing rules. Corporations with less than $1 million, but at least $10,000 of receipts within New York, will be considered "deriving receipts from activity" in New York if the corporation is a member of a combined group that has $1 million or more in receipts attributable to New York under the revised sourcing rules.

Tax rates

Under current New York law, C corporations pay tax on one of four bases, depending on which base produces the highest tax. These bases include entire net income, capital (assets for banks), minimum taxable income, and fixed dollar minimum. In addition to the tax paid on the highest of the four alternative bases, general business corporations currently pay a tax of 0.9 mills/dollar of subsidiary capital allocated to New York State. The budget bill eliminates the minimum taxable income base as well as the tax on subsidiary capital.

Tax on business income: Currently, most New York corporate taxpayers, including banking corporations, pay tax on entire net income attributed to New York at a rate of 7.1 percent.[21] Smaller businesses with receipts under a certain amount and "qualified" and "eligible qualified" New York manufacturers (as defined under New York law) pay tax on entire net income at reduced rates. Under the budget bill, the tax imposed on corporations would be the highest of that computed on the business income base, capital base, or fixed dollar minimum base. For taxable years beginning on or after January 1, 2016, general taxpayers, including banking corporations, will pay tax on "business income" at a rate of 6.5 percent.

Capital tax: Currently, a 0.15 percent tax rate applies to allocated capital, with the maximum tax capped at $1 million. Under the budget bill, the 0.15 percent capital rate remains the same for tax years beginning before January 1, 2016, but thereafter is incrementally reduced to zero percent for tax years beginning on or after January. The cap is increased to $5 million for tax years beginning on or after January 1, 2016. It is unclear under the budget bill however, how capital of an international bank will be allocated to New York for purposes of computing this tax.

Fixed dollar minimum tax: Finally, the budget bill retains the current fixed dollar minimum tax based on a taxpayer's New York State-sourced receipts, but increases the tax incrementally up to $200,000 for taxpayers with over $1 billion of New York receipts. Currently, the fixed dollar minimum tax as applied to general corporations is capped at $5,000. Banking corporations, which pay a $250 minimum tax under current law, will be subject to the fixed dollar minimum tax applied to general corporations.

Classes of income/tax base changes

Determining the tax base: Under the budget bill, the exclusion of income and deductions related to subsidiary capital is repealed. Entire net income minus net investment income and net "other exempt income," subject to certain modifications, will equal a taxpayer's business income. The new law revises the term "investment income" to mean, in general, income—including capital gains in excess of capital losses—from investment capital to the extent included in computing entire net income less (1) any interest deductions attributable to investment capital or investment income or (2) the taxpayer's loss, deduction, and/or expense generally attributable to transactions entered to manage the risk of price changes or currency fluctuations with respect to any item of investment capital."Investment income" does not include any amount treated as dividends under I.R.C. § 78.

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[21] Taxpayers having nexus in the Metropolitan Commuter Transportation District are also subject to a surcharge under both current law and the budget bill; the surcharge is discussed further below.

The new law defines "investment capital" to mean nonunitary investments in stocks held by the taxpayer for more than six consecutive months. Ownership of stock representing less than 20 percent of the voting power of the corporation is presumed to be nonunitary. Stock in a corporation that is included in the taxpayer's unitary or commonly owned group report is not considered investment capital. In addition, when income or gain from a debt obligation or other security cannot be apportioned to the state using the business allocation percentage because of U.S. constitutional principles, the debt obligation or security will be included in investment capital. Special rules apply for stock acquired during the second half of the taxable year.

Article 32 bank tax filers currently exclude from entire net income 60 percent of dividends from subsidiary capital, 60 percent of the amount by which gains exceed losses from the sale of subsidiary capital, 17 percent of interest income derived from subsidiary capital loans, and 22.5 percent of interest income from Federal and New York government bonds held for investment. At present, bank tax filers also can elect certain tax benefits associated with maintaining an "international banking facility" (IBF). In addition to repealing Article 32 in its entirety, the budget bill eliminates these traditional exclusions and apportionment benefits.

Under the budget bill, investment income and deductions for interest expenses and other expenses attributable to investment income are eliminated from entire net income. If the attributable interest expense or other expense exceeds investment income, the excess is disallowed. In lieu of attributing interest expenses to investment income or other exempt income, taxpayers can elect to simply reduce investment or other exempt income by 40 percent.

Tax base for non-U.S. companies: Under the new law, entire net income for a corporation that is created or organized under the laws of a foreign country and not treated as a domestic corporation under I.R.C. § 7701 is limited to income that is effectively connected with the conduct of a U.S. trade or business, as defined in I.R.C. § 882. Dividends or interest on any kind of stock, securities, or indebtedness will be included in entire net income only if such income is effectively connected with the conduct of a trade or business in the United States as determined under I.R.C. § 864. Foreign corporations will be required to add back income exempt from tax under a federal tax treaty, but only to the extent that the income qualifies as "effectively connected" and the treaty does not preclude a state from taxing such income. Currently, foreign corporations are taxed on entire net income within and without the United States.

Net operating loss provisions: The budget bill makes substantial changes to New York's net operating loss provisions. Under current law, New York NOLs are carried preapportionment and are subject to a complex set of carryback and carryforward rules that reference the corresponding federal NOLs subject to carryback or carryforward in each year. Under the revised law, New York NOLs are computed on a postapportionment basis without reference to the federal NOL year (i.e., no "touching rule" limitation), or amount, can be carried back to the three taxable years preceding the loss year, and can be carried forward for 20 years. The maximum NOL utilized in a year is the amount that reduces the taxpayer's tax on allocated business income to the higher of the tax on the capital base or the fixed dollar minimum.

The budget bill also addresses the treatment of prereform NOLs. Unabsorbed NOLs, meaning those that were available for carryover on the last day of the base year (defined as the last taxable year beginning on or after January 1, 2014, and before January 1, 2015), are converted and utilized as a "prior NOL conversion subtraction," which can be deducted against a taxpayer's postapportioned business income subject to certain limitations.

Apportionment provisions for general corporations

The budget bill contains a new Section 210-A, which significantly revises the rules for apportioning business income and capital to New York by using a single-receipts factor. Under current Article 9-A law, most taxpayers apportion business income and business capital by reference to a single-receipts factor; Article 32 bank tax apportionment, by contrast, takes into account receipts, deposits, and payroll factors. Some of the budget bill's apportionment provisions mirror the provisions that currently apply for sourcing receipts under Article 9-A and Article 32. For example, the long-standing "marketplace" sourcing rules used by securities broker-dealers and mutual fund advisors are continued. Other provisions, however, newly adopt a "customer-based" approach to sourcing receipts to New York.

One of the changes is the end of the so-called "SINAA"[22] approach for taxpayers with receipts from lending as well as the end of the bank tax approach for sourcing receipts from trading and investment activities. Also, with narrow exceptions for certain dividends, gains, and interest income, the revised law implements "full factor representation" in the receipts factor for all income that is included in business income—a change from current Article 9-A and, to some extent, current Article 32 law.[23]

In place of the SINAA approach currently used for sourcing certain lending receipts, the budget bill generally adopts a customer-based approach for sourcing gross receipts (to the extent that existing law is not already so aligned). With respect to receipts from services and digital products, the revised law prospectively ends the uncertainty currently faced by many taxpayers. Under current law, "service receipts" are sourced to where the taxpayer actually performs the service. On audit, however, the State frequently seeks to characterize many classes of seemingly "service receipts" as "other business receipts," which are sourced to where the receipts are "earned." The audit division commonly asserts that the receipts are earned where a customer's modem that receives the work product is located.

The new budget bill's apportionment regime includes the following additional features of interest to banking organizations. Receipts from sales of tangible personal property (other than commodities) are included in the New York numerator if the property is shipped to an in-state destination. While this has long been the rule under Article 9-A, there has been some confusion as to the sourcing of such sales under the Article 32 bank tax because the Article 32 bank tax does not provide definitive rules for sourcing sales of tangible personal property. *See In re BTMU Leasing and Finance, Inc.*, Dkt. No. 821525 (N.Y. Div. of Tax App. Nov. 26, 2008).

Interest income on loans not otherwise specifically sourced under the budget bill is sourced to the location of the borrower, except that interest income from loans secured by real property is sourced to the situs of the real property. Certain formulaic rules will also apply to sourcing net gains from the sales of loans secured by real property and other loans.

Receipts from other services not specifically addressed and other business receipts are included in the New York numerator if the location of the customer is in New York based on a specific hierarchy of rules. Under the hierarchy, receipts are sourced to New York if the benefit is received in New York or, if that is undeterminable based on information known to the taxpayer or that could be known to the taxpayer upon reasonable inquiry, the delivery location is in New York. If this information is unavailable, the receipts can be sourced using the prior year's apportionment fraction for service and other business receipts, or finally, by using the fraction for the current year that includes those receipts that can be sourced using the hierarchy provided.

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[22] SINAA is an acronym used in some state apportionment regimes where income from certain types of loans is sourced based on where the contacts occur. The contacts covered by SINAA include solicitation, investigation, negotiation, approval, and administration.

[23] Full factor representation generally means that all receipts included in the tax base are included in computing the apportionment percentage.

Receipts from financial transactions

Under the revised law, a taxpayer may elect to source receipts from "qualified financial instruments" using a fixed percentage method or to the location of the customer. "Qualified financial instruments" are defined as financial instruments that are marked to market under I.R.C. §§ 475 or 1256. Under the fixed percentage method, a taxpayer can make an irrevocable election to assign eight percent of all income from qualified financial instruments to the New York numerator. The election is to be made annually on an original, timely filed return. If this method is not elected, all financial instrument income will be sourced to customer location, which is generally the billing address for individuals and commercial domicile for businesses.

For taxpayers that do not make the fixed percentage election, the budget bill sets forth extensive rules for sourcing receipts related to loans, federal, state and municipal debt, asset-based securities, corporate bonds, reverse repurchase agreements and securities borrowing agreements, federal funds, dividends and net gains from sales of stock or partnership interests, other financial instruments, physical commodities, receipts from broker or dealer activities, receipts from credit cards, merchant discounts, credit card authorization processing and similar activities, and receipts from certain services to investment companies.

Combined reporting

Under the budget bill, the current combined reporting rules are repealed in their entirety—including the provisions requiring substantial intercorporate transactions, which is often a source of dispute between taxpayers and the Department of Taxation and Finance.

Fifty percent ownership test: Under new law, a combined report is required if a taxpayer meets a *more than* 50 percent ownership test with other corporations and is engaged in a unitary business with those corporations. Banks and general business corporations are combinable with each other.

Corporations included and excluded from the combined group: Other corporations that are required to be included in a combined report include (1) all captive REITs and RICs not required to be included in a combined report under Article 33 (insurance law), (2) combinable captive insurance companies (as defined), and (3) alien corporations that are considered to be U.S. domestic entities under I.R.C. § 7701 or have effectively connected income under I.R.C. § 882. Corporations specifically excluded from the combined report under new Section 210-C include (1) entities taxable under the Article 9 telecommunication regime or the Article 33 insurance tax, (2) a REIT or RIC that is not a captive REIT or RIC, (3) a New York S corporation, and (4) an alien corporation that under any provision of the Internal Revenue Code is not treated as a "domestic corporation" under I.R.C. § 7701 and has no effectively connected income for the tax year. In addition, a corporation that is subject to tax solely by virtue of owning an interest in a limited partnership doing business in New York that has no New York nexus affiliates will not be allowed or required to file a combined report with its related corporations.

Commonly owned group election: Under the new law, a taxpayer may elect to treat as its combined group all corporations that meet the greater than 50 percent ownership requirement, regardless of whether each member of the group is conducting a single, unitary business. The election, once made, is irrevocable and binding for the tax year made, and the next six taxable years.

Metropolitan transportation business tax surcharge

Under the budget bill, the "temporary" metropolitan transportation business tax surcharge, which has been in place since 1982, is made permanent and is imposed on domestic/foreign corporations for the privilege of exercising their corporate franchise, doing business, employing capital, owning or leasing property, maintaining an office, or *deriving receipts from any activity* (new language) in the Metropolitan Commuter Transportation District (MCTD). The budget bill contains economic nexus provisions, similar to those discussed above, for determining whether a corporation is required to pay the surcharge due to the amount of receipts or customers in the MCTD. Currently, the surcharge is 17 percent of the former 9 percent entire net income tax rate (or former alternative tax base rates, as appropriate) (*i.e.*, 1.53 percent of apportioned entire net income under Article 9-A or Article 32). Under the revised law, the surcharge is imposed at a rate of 25.6 percent of the tax imposed (before the deduction of credits) for tax years beginning on or after January 1, 2015, and before January 1, 2016. For tax years beginning on or after January 1, 2016, the surcharge rate is to be determined by the commissioner so as to help ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for the fiscal year.

To determine the portion of a taxpayer's business attributable to the MCTD, taxpayers will continue to apply a three-factor (property, payroll, and receipts) apportionment formula that measures the amount of the apportionment factors within the MCTD relative to the amount of the factors within the state of New York. The budget bill provides some guidance as to how the three-factor formula is computed in light of the overall tax reform.

Tax credits

The budget bill makes numerous changes to New York's tax credit regime.

Credits generated under current law but not used as of the close of the 2014 tax year can be carried forward and used for tax years beginning on or after January 1, 2015 (except for alternative minimum tax credits). Moreover, the recapture rules for the repealed credits are left intact.

Next steps and insights

Banking organizations will likely see significant changes to their New York State corporate tax profile. The repeal of Article 32 and the changes to tax base, customer-based single factor apportionment, postapportioned NOLs, and the new combined filing rules will combine to impact a bank's New York state effective tax rate and future cash tax liability. Taxpayers need to address how the law changes will affect their financial statements and overall New York tax footprint. One question that frequently comes up is whether New York City will enact parallel legislation to conform to the State's new tax regime. The New York City fiscal year runs from July 1 to June 30. Thus, New York City has ample time to consider adopting parallel provisions for its own on-time budget. In light of some of the leading arguments behind the State's corporate tax reform—to make New York's corporate tax simpler and to make New York a more friendly place to do business—not following the State's lead would seem somewhat counterproductive as well as add significant complexity to those entities operating in both the State and New York City.

Contacts

Please contact Russ Levitt, Dave Turzewski, Fred James, or Hernan Stigliano with questions on New York's bank and corporate tax reform.

IGA's guidance released by the Treasury and IRS; IGA signed with Honduras; implementing guidance from Germany – countries with IGAs listed; more time provided for foreign financial institutions to register

by Laurie Hatten-Boyd and Danielle Nishida

The Treasury Department and IRS recently announced that jurisdictions that have reached "agreements in substance" with the United States on the terms of intergovernmental agreements (IGAs) under the Foreign Account Tax Compliance Act (FATCA) can be treated as having agreements in effect until the end of 2014.

According to Treasury's release, this treatment will be available to jurisdictions:

- That reach "agreements in substance" prior to July 1, 2014
- That consent to having the status of their agreements disclosed.

Read Announcement 2014-17 released by the IRS.

26 IGAs signed, 45 IGAs in effect

Treasury reports that as of April 2, 2014:

- The United States has signed 26 IGAs with countries and jurisdictions—read the list.
- There are 19 additional countries and jurisdictions that will be treated as having IGAs in effect, bringing the total number of jurisdictions that are treated as having IGAs in effect to 45—read the list.
- This list is expected to continue to grow in the coming weeks, as additional countries provide consent to having the status of their IGAs disclosed and additional agreements in substance are reached.

FATCA – IGA with Honduras

The Treasury Department recently posted text of an intergovernmental agreement (IGA) signed by representatives of the United States and Honduras in order to implement provisions of U.S. law known as FATCA.

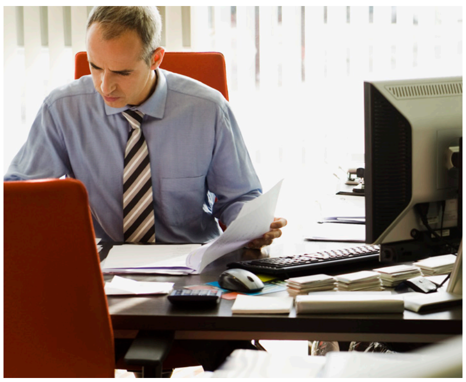
The IGA between the United States and Honduras follows the Model 1 IGA. Read text of the IGA with Honduras.

Germany – FATCA implementing guidance

Read an April 2014 report prepared by the KPMG member firm in Germany: *German Tax Monthly*. Which contains discussions about:

- A draft legal ordinance to implement Germany's FATCA intergovernmental agreement with the United States
- Tax treatment of certain reorganization transactions in the context of a "trust scheme" (*Treuhandmodell*)
- Taxation of portfolio dividends and guidance regarding acquisition of a shareholding in the course of the year
- New income tax treaty with Costa Rica is signed.

A update of income tax treaties in Germany's treaty network



Treaty and IGA update

by Anthony Marsicovetere

As mentioned in our previous quarterly newsletter, a number of pending U.S. tax treaties and protocols to existing tax treaties have stalled with the U.S. Senate. In late 2011 Senator Rand Paul, R-Ky, placed a hold on Senate floor consideration of the pending Swiss and Luxembourg protocols as well as the pending treaty with Hungary. According to Tax Analysts, various sources stated Senator Paul placed this hold based on his objection to the treaty information sharing provisions contained in these agreements. These agreements contain updated information exchange provisions that implement the OECD standard on information exchange.

For an update on IGA's, please see the IGA Guidance Alert article.

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