

IRS Plans to Retain January 1 Effective Date for FATCA

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The government does not plan to delay the January 1, 2013, effective date of the Foreign Account Tax Compliance Act, and it always intended to let foreign banks accept the forms required under the law in PDF format, an IRS official said May 7.

Danielle Nishida, branch 2 attorney-adviser, IRS Office of Associate Chief Counsel (International), said that although there are no plans to delay the overall effective date, taxpayers and practitioners in the financial industry should submit comments on how much time is needed to comply with the specific requirements. Nishida spoke at the Tax Reporting Group's annual Tax Reporting and Withholding Conference in Arlington, Va.

Nishida said it would be difficult for the government to delay the effective date for the entire law because of the statutory requirement that it be effective in 2013. "What we do have the ability to do is push off certain things, as long as we feel that it comports with the starting date," she added.

Proposed regulations were released in February and included a phase-in of reporting and withholding requirements. (For prior coverage, see *Tax Notes*, Mar. 12, 2012, p. 1362, *Doc 2012-4858*, or *2012 TNT 46-2*. For REG-121647-10, see *Doc 2012-2485* or *2012 TNT 27-7*.)

Accepting PDF Forms

Regarding whether forms submitted to financial institutions could be accepted as PDFs under the FATCA regs, Nishida said, "Our position on why we didn't need to specifically say PDFs were acceptable is because our position is they've always been acceptable." According to Nishida, the government wanted to avoid mentioning PDFs specifically in the proposed regs in order to avoid confusion by implying that it was a new rule.

"You have to follow the rules that are listed in 1441, which indicates you have to have some system for accepting [forms] that indicates that the person who sent them is the person listed on the form," Nishida said. She said that such a system could include procedures that are satisfied through e-mails with the sender. "We will try to make that very clear when we finalize," she said.

That statement came as a surprise to audience members, who for years have thought the rules under section 1441 required original forms with an inked signature. Section 1441 imposes a 30 percent withholding tax on U.S.-source income paid to

nonresident aliens. Forms in the W-8 series are used to certify the status of the foreign payee to withholding agents.

"The IRS has taken the position on exam that withholding agents must have original, pen-to-paper W-8s," said Cheryl S. Riedlinger of the Tax Reporting Group. That means that the persons providing the forms, most of whom are based overseas, must mail a written copy along with all supporting documentation. If there is any defect, the entire package must be sent again. "Allowing e-mailed PDFs for this process would save withholding agents millions of dollars," said Riedlinger.

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Nishida distinguished e-mailing PDFs from an electronic system for collecting Forms W-8, which can receive a memorandum of understanding from the IRS providing preapproval to forms collected using the system. Nishida said the IRS would not provide an MOU for a system that only transmits a PDF from point A to point B. (For prior coverage, see *Tax Notes*, June 13, 2011, p. 1129, *Doc 2011-12116*, or *2011 TNT 108-3*.) ■