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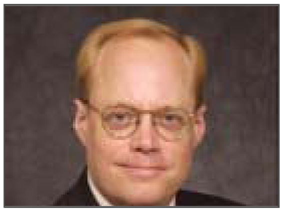

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THE TAX LAWYER

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IRS Implements FATCA, Ramps Up Tax Evasion Battle

FATCA is not popular with financial institutions, Americans abroad or foreign governments. However, the IRS likes it a lot. Enacted in 2010, FATCA targets non-compliance by U.S. taxpayers using foreign accounts. It enlists the aid of financial institutions worldwide to ferret out Americans and if Americans won't disclose their accounts, to withhold and remit money to the IRS.

(Photo credit: kenteegardin)

The IRS and Treasury have issued final regulations, TD 9610 Final Regulations, including a step-by-step process for U.S. account identification, information reporting, and withholding by foreign financial institutions (FFIs). The final regulations are phased in to provide time for financial institutions to develop necessary systems. They provide relief from withholding for certain grandfathered obligations and certain payments made by non-financial entities.

These new rules:

1. Expand and clarify the treatment of certain low-risk institutions such as governmental entities and retirement funds;

2. Provide that certain investment entities may be reported on by FFIs where they hold accounts rather than being required to register as FFIs and report to the IRS; and
3. Clarify the types of passive investment entities that must be identified and reported by financial institutions.

The final regulations provide streamlined registration and compliance procedures for groups of financial institutions including commonly managed investment funds. They provide additional detail regarding FFIs' obligations to verify their compliance under FATCA.

Since proposing regulations in February 2012, the U.S. Treasury has collaborated with foreign governments to develop model intergovernmental agreements that facilitate implementing FATCA. Norway has just joined the United Kingdom, Mexico, Denmark, Ireland, Switzerland, and Spain as countries that have signed or initialed model agreements. Treasury is engaged with more than 50 countries and jurisdictions to curtail offshore tax evasion. More signed agreements are expected soon.

Instead of reporting to the IRS directly, some FFIs can report FACTA data to their own governments who then will exchange this information with the IRS. Treasury also developed a second model intergovernmental agreement. A partner jurisdiction signing that agreement agrees to direct its FFIs to register with the IRS and report FATCA data directly.

Under both models, the IRS receives information about U.S. accounts. In short, FATCA is in full swing. Updates and more information can be found on the FATCA page at IRS.gov.

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