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TREASURY AND IRS ISSUE FINAL REGULATIONS TO COMBAT OFFSHORE TAX EVASION

Treasury Advances Efforts to Secure International Participation, Streamline Compliance, and Prepare for Implementation of the Foreign Account Tax Compliance Act

WASHINGTON – The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today issued comprehensive final regulations implementing the information reporting and withholding tax provisions commonly known as the Foreign Account Tax Compliance Act (FATCA). Enacted by Congress in 2010, these provisions target non-compliance by U.S. taxpayers using foreign accounts. The issuance of the final regulations marks a key step in establishing a common intergovernmental approach to combating tax evasion.

These regulations provide additional certainty for financial institutions and government counterparts by finalizing the step-by-step process for U.S. account identification, information reporting, and withholding requirements for foreign financial institutions (FFIs), other foreign entities, and U.S. withholding agents.

"These regulations give the Administration a powerful set of tools to combat offshore tax evasion effectively and efficiently," said Deputy Secretary Neal Wolin. "The final rules mark a critical milestone in international cooperation on these issues, and they provide important clarity for foreign and U.S. financial institutions."

The final regulations issued today:

- **Build on intergovernmental agreements that foster international cooperation**. The Treasury Department has collaborated with foreign governments to develop and sign intergovernmental agreements that facilitate the effective and efficient implementation of FATCA by eliminating legal barriers to participation, reducing administrative burdens, and ensuring the participation of all non-exempt financial institutions in a partner jurisdiction. In order to reduce administrative burdens for financial institutions with operations in multiple jurisdictions, the final regulations coordinate the obligations for financial institutions under the regulations and the intergovernmental agreements.

- **Phase in the timelines for due diligence, reporting and withholding and align them with the intergovernmental agreements.** The final regulations phase in over an extended transition period to provide sufficient time for financial institutions to develop necessary systems. In addition, to avoid confusion and unnecessary duplicative procedures, the final regulations align the regulatory timelines with the timelines prescribed in the intergovernmental agreements.

- **Expand and clarify the scope of payments not subject to withholding.** To limit market disruption, reduce administrative burdens, and establish certainty, the final regulations provide relief from withholding with respect to certain grandfathered obligations and certain payments made by non-financial entities.

- **Refine and clarify the treatment of investment entities.** To better align the obligations under FATCA with the risks posed by certain entities, the final regulations: (1) expand and clarify the treatment of certain categories of low-risk institutions, such as governmental entities and retirement funds; (2) provide that certain investment entities may be subject to being reported on by the FFIs with which 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.

- **Clarify the compliance and verification obligations of FFIs.** The final regulations provide more streamlined registration and compliance procedures for groups of financial institutions, including commonly managed investment funds, and provide additional detail regarding FFIs' obligations to verify their compliance under FATCA.

Progress on International Coordination, Including Model Intergovernmental Agreements

Since the proposed regulations were published on February 15, 2012, Treasury has collaborated with foreign governments to develop two alternative model intergovernmental agreements that facilitate the effective and efficient implementation of FATCA.

These models serve as the basis for concluding bilateral agreements with interested jurisdictions and help implement the law in a manner that removes domestic legal impediments to compliance, secures wide-spread participation by every non-exempt financial institution in the partner jurisdiction, fulfills FATCA's policy objectives, and further reduces burdens on FFIs located in partner jurisdictions. Seven countries have already signed or initialed these agreements.

Today, Treasury announced for the first time that Norway has 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, and more signed agreements are expected to follow in the near future.

Additional Background on the Model Agreements

On July 26, 2012, Treasury published its first model intergovernmental agreement (Model 1 IGA). Instead of reporting to the IRS directly, FFIs in jurisdictions that have signed Model 1 IGAs report the information about U.S. accounts required by FACTA to their respective governments who then exchange this information with the IRS.

Treasury also developed a second model intergovernmental agreement (Model 2 IGA) published on November 14, 2012. A partner jurisdiction signing an agreement based on the Model 2 IGA agrees to direct its FFIs to register with the IRS and report the information about U.S. accounts required by FATCA directly to the IRS.

These agreements do not offer an exemption from FATCA for any jurisdiction but instead offer a framework for information sharing pursuant to existing bilateral income tax treaties. Under both models, all financial institutions in a partner jurisdiction that are not otherwise excepted or exempt must report the information about U.S. accounts required by FATCA. Therefore, the IRS receives the same quality and quantity of information about U.S. accounts from FFIs in jurisdictions with IGAs as it receives from FFIs applying the final regulations elsewhere, but these agreements help streamline reporting and remove legal impediments to compliance.

Background on FATCA

FATCA was enacted in 2010 by Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA requires FFIs to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. In order to avoid withholding under FATCA, a participating FFI will have to enter into an agreement with the IRS to:

- Identify U.S. accounts,
- Report certain information to the IRS regarding U.S. accounts, and
- Withhold a 30 percent tax on certain U.S.-connected payments to non-participating FFIs and account holders who are unwilling to provide the required information.

Registration will take place through an online system. FFIs that do not register and enter into an agreement with the IRS will be subject to withholding on certain types of payments relating to U.S. investments. Treasury and IRS will continue to work closely with businesses and foreign governments to implement FATCA effectively. Updates and further information on FATCA can be found by visiting the FATCA page at Treasury.gov or IRS.gov.

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