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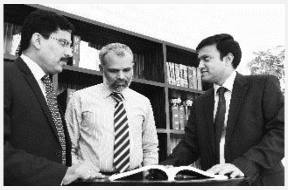
FATCA Newsletter

A newly declared procedural guideline to the current FFI Agreement for participating FFI's and Reporting Model II FFI's has been introduced that updates the agreement entered into by a foreign financial institution with the IRS. Revenue Procedure 2014-38 updates and supersedes the FFI Agreement originally released as Revenue Procedure 2014-13, which establishes an FFI's registration under Form 8957 and engaging in subsequent due diligence, withholding, information reporting, tax return filing and other obligations as a participating FFI under Section 1471.



What does Revenue Procedure 2013-38 entail?

This newly introduced revenue procedure provides guidance to FFI's and branches of FFI's treated as "reporting financial institutions" under an applicable Model II Intergovernmental Agreement (IGA). A reporting Model II FFI should apply the FFI agreement by substituting the term "reporting Model II FFI" with "participating FFI" throughout the FFI Agreement, except in cases where the FFI Agreement explicitly refers to a reporting Model II FFI.

Section 5 of Revenue Procedure 2014-13

The FFI Agreement in Section 5 of this revenue procedure shall apply to an FFI that has submitted a FATCA registration with the IRS to be treated as a participating FFI (including a reporting Model II FFI) and that has received a "GIIN" or Global Intermediary Identification Number, regardless of whether the FFI receives a GIIN before or after the effective date of this revenue procedure.

Read More: *http://www.irs.gov/pub/irs-drop/rp-14-38.pdf*

What is the outcome for a PFFI after registering under Form 8957 post Revenue Procedure 2014-13?

An FFI that agrees to comply with the terms of this agreement applicable to one or more of its branches will be treated as a PFFI with respect to those branches and such PFFI branches will not be subject to withholding under Section 1471. Therefore an FFI must act in its capacity as a participating FFI with respect to all of the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement.

A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located must Meet the conditions described in section1471-4(e) (2) (iii), is to be treated as a limited branch and will be subject to withholding under section 1471 as a nonparticipating FFI.

Read More: *http://www.irs.gov/pub/irs-drop/rp-14-38.pdf*

What are the specific areas that affect a Model II FFI that under Revenue Procedure 2014-13?

Due Diligence Requirements for documentation and identification of account holders and non-participating FFI Payees :

A Model II FFI must apply the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model II FFI maintains within the Model II IGA jurisdiction unless the reporting Model II FFI elects to apply the due diligence procedures of this agreement, as described in this section 3.

Withholding Requirements:

Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model II FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model II IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model II FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts.

Model 1 IGA in the Kingdom of Saudi Arabia

As per the US Treasury website, the Kingdom of Saudi Arabia has in substance agreed for a Model 1 IGA for implementing FATCA. This would be a significant advantage for Financial Institutions in Saudi Arabia as concerns relating to disclosure of customer information and withholding will be addressed through local law in the Kingdom of Saudi Arabia.

http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx

BNP Paribas 'facing big fine after probe'

PARIS: BNP Paribas chief executive officer Jean-Laurent Bonnafe in a message to employees has warned that the French bank is facing heavy penalties following a US probe into breaking sanctions which should end "very soon", a French TV channel reported yesterday.
BNP Paribas declined to comment but sources this week said the French bank is expected to plead guilty to a federal criminal charge and pay nearly $9 billion as part of a larger settlement with multiple enforcement authorities that could be announced as early as next week.
"I want to say it clearly, we are going to be heavily sanctioned," broadcaster iTele quoted Bonnafe as saying in an internal message posted on June 27.
"Malfunctions have occurred and mistakes were made. But this difficulty we are experiencing should not impact our roadmap."
US authorities are examining whether BNP Paribas evaded US sanctions relating primarily to Sudan between 2002 and 2009 and whether it stripped identifying information from wire transfers so they could pass through the US financial system without raising red flags.

Source: Gulf Daily News – 29 June 2014

http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=380076

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