2015 Year in Review

TOP 5 DEVELOPMENTS IN GLOBAL TAX INFORMATION REPORTING

2015 was a landmark year in the world of information reporting. The OECD updated its *Standard for Automatic Exchange of Financial Account Information*, more commonly referred to as CRS and FATCA. *It appears that they are* preparing to take their “transitional year” brakes off and enter full swing. This article offers a brief summary of the top 5 most influential developments of 2015.

1. ***OECD Publishes <u>The CRS Implementation Handbook</u>***

In August, 2015, the OECD published a new handbook providing guidance to governments and financial institutions on the implementation of the Common Reporting Standard. The handbook contains guidance on implementing this new regime, along with an overview of the conceptual framework and relevant definitions.

With early adopters set to begin implementation of CRS on January 1, 2016, financial institutions are rushing to review their information reporting processes to successfully adapt.

2. ***First year of FATCA Reporting was not without fail***

The first ever cycle of FATCA reporting took place in the Spring/Summer of 2015 with respect to 2014 reportable accounts. After facing several extensions and setbacks, particularly in Model 1 jurisdictions, reporting eventually concluded amidst substantial confusion.

Many IGA jurisdictions failed to implement systems that were capable of handling reporting functions with sufficient lead time for financial institutions to timely comply. Consequently, 2016 may see a rise in the number of jurisdictions taking advantage of the Model 1 Option 2 method of utilizing the IRS IDES system for performing Model 1 reporting.

3. ***IRS Increases Information Reporting Penalties***

The Trade Preference Extension Act of 2015, signed into law on June 29, 2015 brought changes to Internal Revenue Code Sections 6721 and 6722, increasing penalties for failure to file correct information returns, and failure to furnish correct payee statements.

The increase is applicable to returns and statements, filed after December 31, 2015 and impacts a host of forms relevant to financial institutions and withholding agents such as Forms 1099, 1042-S and 8966. Applicable penalties substantially increase under the new legislation from $100 per form to $250, with the cap rising from $1,500,000 to $3,000,000.

Notably, this increase represents the second time in 5 years that the IRS has doubled the applicable information reporting penalties, representing a significant statement of intent on their part.

4. *U.S. signs first competent authority arrangements with Australia and the United Kingdom*

On September 24, 2015 the U.S. competent authority announced the signing of competent authority arrangements (CAA) with Australia and the United Kingdom, furthering their efforts to implement FATCA and to resolve the administrative and procedural aspects of the automatic exchange of information.

Among other things, the CAAs provide additional guidance on what constitutes administrative or minor noncompliance under an IGA, and what might be considered significant noncompliance. Generally, incorrect or incomplete reporting will be considered a minor error, while withholding failures and failures to report financial accounts may be viewed as significant. The CAAs confirm that these standards will be applied with deference to “good faith” efforts as established by Notice 2014-33.

5. *IRS Extends Several FATCA Features in Notice 2015-66*

Severe budget cuts may have adversely impacted the IRS at an inopportune time for the FATCA rollout, as Notice 2015-66 reveals several anticipated extensions.

“Gross Proceeds” withholding has been postponed for two years from dispositions occurring after December 31, 2016 to dispositions occurring after December 31, 2018. Likewise, withholding on foreign passthru payments has been extended from January 1, 2017 to January 1, 2019.

Additional extensions have affected both Limited and Sponsored entities, with the deadline to register sponsored entities having been extended to January 1, 2017, and the end of “limited” status extended through December 31, 2016.

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