

April 16, 2014

The Honorable Jacob J. Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable John A. Koskinen
Commissioner of Internal Revenue
Internal Revenue Service
111 Constitution Avenue NW, Room 1519
Washington, DC 20224

Dear Secretary Lew and Commissioner Koskinen:

Based on the current Foreign Account Tax Compliance Act (FATCA) effective date of July 1, 2014, *financial institutions have less than 90 days* to:

1. Finish implementing profound changes to their new client onboarding procedures in the countries in which they operate – procedures that will require FATCA certifications from non-U.S. citizens/entities that in most cases are unfamiliar with U.S. tax concepts;
2. Complete modifications to their current withholding systems for payments of U.S. income that may be subject to FATCA withholding, making sure to properly coordinate with current withholding requirements;
3. Ensure information necessary to file the required information returns under FATCA can be captured;
4. Modify their compliance efforts to take into account inter-governmental agreements (IGAs) where negotiations are being completed and the IGAs are becoming effective; and
5. Make determinations on how to register all their legal entities given the remaining legal uncertainties and lack of clarity in the regulations, including determining whether they are even allowed to register any entities as a participating foreign financial institution.

Collectively, our members¹ have to date spent hundreds of millions of dollars and devoted significant energy and resources to meet the FATCA compliance timeline. We also recognize the

¹ The Institute of International Bankers is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. Further information is available at www.iib.org.

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$185 million in assets. Learn more at aba.com.

The Organization for International Investment (OFII) is a business association representing U.S. subsidiaries of foreign companies. OFII works to ensure the United States remains the top location for global investment, advocating for fair, non-discriminatory treatment of foreign-based companies and policies that will encourage them to establish U.S. operations, increase American employment, and boost U.S. economic growth. Further information is available at www.ofii.org.

significant effort put forth by the Treasury and IRS to develop the implementing regulations, modify a plethora of forms and processes, and negotiate IGAs with other countries. This is truly a monumental task for all involved. Although the efforts by industry and government have been tireless, we believe the complexity and the magnitude of the continuing challenges do not comport with the current compliance deadlines.

We appreciate the strong desire of the Treasury and IRS to press forward with the July 1st compliance dates for withholding, reporting and new account on-boarding procedures, but this desire gives insufficient weight to the fact that the guidance, additional regulations, key forms and instructions, IGAs and other information are still either absent or have only recently been completed by Treasury and the IRS. In very practical terms, the result of this delay is that, notwithstanding their continuing strong efforts to meet the July 1, 2014 deadline, financial institutions will not have sufficient time to finish the preparatory work necessary to comply as currently scheduled.

Based on the current state of FATCA implementation, we urge Treasury and IRS to extend the general effective date to at least January 1, 2015, with the expectation that final forms and further guidance/clarification will be provided in the very near term. If all the final forms/instructions and additional guidance are not soon forthcoming, additional relief from the effective date may be necessary. We also urge Treasury and the IRS to provide a transitional period during which financial institutions that use reasonable efforts to implement FATCA are not penalized for their failure to fully comply. Transitional relief is needed as a result of the continuing efforts of the Treasury and IRS to enter into IGAs with other countries (as financial institutions must modify their compliance efforts based on the new IGAs), and additional guidance required by financial institutions in order to address remaining legal uncertainties and unresolved issues.

In asking for a delay in the effective date and transitional relief, our aim is not to avoid complying with FATCA but rather to facilitate our ability to implement the applicable requirements in as effective a manner as reasonably possible. Indeed our members are registering through the IRS FATCA registration portal, many with the aim of registering by the May 5th deadline to be on the first list of foreign financial institutions (FFIs). It is our belief that financial institutions will use this additional time to come into compliance prior to January 1, 2015 with respect to their obligations, commensurate with the provision of documents and guidance necessary to comply.

However, despite this effort to register and comply, the reality is that IGAs are still being negotiated, some final forms and instructions still need to be issued (and others have only been issued recently), there are legal uncertainties surrounding the registration of large multinational financial groups, the industry is still parsing through recently issued regulations, there is no final qualified intermediary (QI) agreement, and there are other unresolved issues. Below we describe these concerns to further demonstrate why the current July 1st start date is so problematic:

- **Ongoing IGA Process:** The industry appreciates Treasury's ongoing efforts to negotiate IGAs. The IGA process ultimately will help streamline compliance and insure wider participation, although it was never contemplated by Congress and may have significantly added to the work and complexity involved in implementing FATCA. The industry welcomes the IGAs, but financial institutions simply are not able to flip a switch to comply with an IGA. A firm must modify its systems and the training of its personnel once the status of a country changes from a non-IGA to an IGA country. Foreign governments need time to put in place authorizing legislation and financial institutions need an opportunity to understand both the agreement and the legislation and local guidance. Announcement 2014-17, while expanding the number of countries that may be treated as having IGAs to include those that have agreed in substance, still has fewer than 50 jurisdictions (including only 26 signed IGAs as to which the agreements and their Annexes are available), and only one of them has enacted implementing rules and guidance.
- **Missing Final Forms and Instructions:** While the IRS has put out several final forms and instructions in recent weeks, we still do not have all of the final forms (e.g., Forms W-8IMY and Form W-8EXP) nor the accompanying instructions for a number of the forms including, importantly, Form W-8BEN-E. Most financial institutions rely on the assistance of vendors to meet their tax reporting and withholding obligations. Vendors have indicated that it will take up to three months once they receive the final forms and instructions to modify and test their reporting and withholding software/systems. This does not speak to the additional time that will be needed to integrate these modifications (including time for testing) into the systems of individual financial institutions. Draft forms provide little assistance, as trying to develop system modifications based on a form that is subject to change can be both problematic and costly. It also does not take into account the time required for financial institutions to train their personnel not only with respect to the internal operational aspects, but also with respect to interfacing with clients around the world that are unfamiliar with the documentation requirements of FATCA. Not having instructions for some of these forms further complicates this task. Time necessary to translate forms and instructions into local languages also must be taken into account.
- **Issues with registering large multinational FFI groups:** There are serious business concerns, as well as legal concerns, surrounding registration, in part, due to the lack of IGAs in more jurisdictions. For example, many jurisdictions without IGAs have local laws preventing FFIs located in their jurisdiction from fully complying with FATCA. Restrictions on reporting (without obtaining a waiver) and on terminating and blocking accounts are very common. There is uncertainty regarding when and whether an entity that makes a good faith effort to comply despite such restrictions must register as a limited

FFI. The decision is a serious one, as registering an entity as a limited FFI would require such entity to significantly curtail their local institutional businesses (for example, FFIs would be restricted from onboarding any new local clients that are non-participating foreign financial institution). Certain jurisdictions are telling local FFIs that they are not allowed to register in the IRS portal, even to declare limited status. Multinational financial companies thus are faced with a decision to break local law or potentially invalidate the participating status of all of their entities that fall outside of IGA jurisdictions.

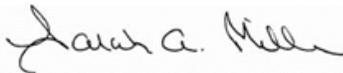
- **Complexity of Recent Guidance:** The amending and coordinating regulations that Treasury and the IRS released on February 20, 2014, while welcome, provide a challenging task for financial institutions as the July 1st deadline approaches. The amending regulations contain at least 50 amendments to the final FATCA regulations, and the coordination regulations conforming FATCA to Chapters 3 and 61, and Sec. 3406 of the Internal Revenue Code require an understanding of the interplay between these distinct reporting and withholding regimes. Parsing through and implementing the changes made in the over 550 pages of regulations is no small task, especially with the global reach of these rules. They contain many broad and important changes to existing rules that will become effective July 1, 2014, with no transition period to allow for implementation of the changes and re-documentation of customers where needed to prevent withholding on July 1st. The new regulations also raise a number of new questions regarding their interpretation and application that must still be answered.
- **Revised Qualified Intermediary (QI) Agreement:** The QI Agreement will continue to apply to major operations that offer U.S. securities to clients. We appreciate that the QI Agreement is scheduled to be revised for FATCA, with potential changes to due diligence requirements and potential allowance for Qualified Securities Lender activities. However, the text of the revised QI Agreement is still not available, and existing QI Agreements are all scheduled to expire on June 30, 2014.
- **Unresolved Issues:** Finally, the industry continues to seek resolution of a variety of issues. These issues present very real fundamental concerns regarding the functionality of the withholding and reporting systems of our members. These issues have been previously raised with the IRS, and we welcome the opportunity for further follow up on these items.

We support the goal of FATCA and have worked in support of our members' efforts to comply with the law. Our members are on the forefront of implementing the changes necessary to comply with FATCA, but these efforts cannot overcome delayed guidance and forms. The FATCA implementation process continues to be a significant challenge, and we can only believe is an even greater challenge for financial institutions that have little or no experience with respect

to U.S. tax reporting and withholding regimes. We have consistently expressed in previous correspondence that it would take eighteen months after all of the final forms, instructions and guidance are issued for the industry to complete system modifications to comply with FATCA requirements on a global basis. Given the current circumstances, there is a real potential for financial market disruption, as financial institutions seek to protect themselves from FATCA liability by withholding wherever there is uncertainty as to whether the payee has properly established its FATCA status, as well as delays and mistakes in the on-boarding of new customers.

Therefore, we again would urge you to extend the general effective date to at least January 1, 2015 and to provide transitional relief that enables financial institutions a sufficient opportunity to implement an effective and realistic FATCA compliance program. We welcome the opportunity to discuss this request with you in greater detail.

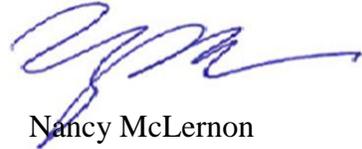
Sincerely,



Sarah A. Miller
Chief Executive Officer
Institute of International
Bankers



Francisca N. Mordi
Vice President and Senior
Tax Counsel
American Bankers Association



Nancy McLernon
President & CEO
Organization for International
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cc: The Hon. Mark Mazur, Assistant Secretary for Tax Policy, Treasury
Robert Stack, Deputy Assistant Secretary (International Tax Affairs), Treasury
Michael Danilack, LB&I Deputy Commissioner (International), IRS