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Clients&FriendsMemo

United States and United Kingdom Sign Intergovernmental Agreement under FATCA

September 20, 2012

On September 14, the United States and the United Kingdom entered into an intergovernmental agreement that, if ratified by the U.K. parliament,[1] would provide financial institutions that are resident in the United Kingdom, and branches of financial institutions that are located in the United Kingdom, with an alternative withholding regime to that imposed under the "Foreign Account Tax Compliance Act" ("**FATCA**") provisions contained in sections 1471 through 1474 of the Internal Revenue Code. The U.S.-U.K. intergovernmental agreement is substantially similar to the "reciprocal" model agreement released by the U.S. Treasury Department on July 26, under which each country exchanges information with the other. We discussed the reciprocal model intergovernmental agreement in an earlier Clients & Friends Memo, available here.[2] However, the U.S.-U.K. intergovernmental agreement contains four significant differences from the model reciprocal agreement:

- **"Most favored nation" clause.** The U.S.-U.K. intergovernmental agreement provides that, if the United States negotiates a similar intergovernmental agreement that imposes less stringent reporting obligations on the signatory country's financial institutions or allows for more liberal financial account due diligence requirements than the U.S.-U.K. agreement, then U.K. financial institutions will automatically be granted the benefit of the more favorable provisions as if those provisions were included in the U.S.-U.K. intergovernmental agreement.
- **Reduced information collection.** The U.S.-U.K. intergovernmental agreement exempts U.K. financial institutions from having to collect the U.S. taxpayer identification number and date of birth of holders of reportable "financial accounts" that were opened before 2014.

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1 Under British law, the intergovernmental agreement is now required to undergo a 21-day "scrutiny" period as part of the ratification process. A "consultation document" released by Her Majesty's Revenue and Customs ("HMRC") in connection with the publication of the U.S.-U.K. intergovernmental agreement indicates that HMRC expects to publish draft legislation by the end of 2013 to implement the agreement.

2 In addition, in February, the IRS released proposed regulations under FATCA. We discussed these regulations in a previous Clients & Friends Memo, available here.

- **Exempted financial institutions.** An annex to the U.S.-U.K. intergovernmental agreement contains a list of U.K. financial institutions that generally will not be required to report their account holders under FATCA, and will not be subject to withholding under FATCA.[3] These include:
  - Governmental subdivisions of the United Kingdom;
  - The Bank of England and any of its wholly owned subsidiaries;
  - The U.K. offices of the International Monetary Fund and several other international organizations;[4]
  - Tax-exempt U.K. pension schemes;
  - Certain registered charities and amateur sports organizations;[5] and
  - Certain licensed U.K. credit unions, investment trust companies, venture capital trusts, industrial and provident societies, building societies, and mutual societies that:
    - (i) have no fixed place of business outside the United Kingdom,
    - (ii) do not solicit account holders outside the United Kingdom,
    - (iii) are required by law to perform tax withholding or information reporting with respect to accounts held by U.K. residents,
    - (iv) have only account holders that are resident in the United Kingdom or another member state of the European Union (subject to a de minimis exception of up to 2% of the entity's aggregate outstanding account value),
    - (v) establish procedures to report any account holders that are U.S. persons, nonparticipating foreign financial institutions, or non-publicly traded

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3 In addition, the U.S.-U.K. intergovernmental agreement clarifies that a U.K. financial institution will not be subject to withholding under FATCA unless the IRS identifies it in a published list of noncompliant U.K. financial institutions. The model intergovernmental agreement required the IRS to identify noncompliant signatory country financial institutions, but did not explicitly exempt financial institutions that were not included in the list from withholding under FATCA.

4 The other organizations are the World Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Finance Corporation Order 1955, the International Development Association, the Asian Development Bank, the African Development Bank, the European Community, the European Coal and Steel Community, the European Atomic Energy Community, the European Investment Bank, the European Bank for Reconstruction and Development, the OECD Support Fund, and the Inter-American Development Bank.

5 To qualify, the entity must be (i) registered as a charity with the Charity Commission of England and Wales, (ii) registered with HMRC for charitable tax purposes, (iii) registered as a charity with the Office of the Scottish Charity Regulator, or (iv) registered as a community amateur sports club with HMRC.

passive nonfinancial foreign entities with controlling U.S. owners, and to close their accounts by 2014, and

(vi) require their affiliates to be subject to the same restrictions.

The U.S.-U.K. intergovernmental agreement does not include the exemption contained in the proposed regulations for "restricted" investment funds that limit their equity and debt owners to persons that present a low risk of tax avoidance.

- **Exempted accounts.** An annex to the U.S.-U.K. intergovernmental agreement contains a list of account types that, if established in the United Kingdom by a U.K. financial institution, will not be subject to reporting under FATCA. These include certain pension plans, individual savings accounts, and other tax-advantaged accounts.

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If you have any questions about this memorandum, please contact Jean Bertrand, Adam Blakemore, Shlomo Boehm, Mark Howe, David S. Miller, Daniel Mulcahy, Jason Schwartz, or any other member of our Tax Department.