Tax Update

IRS Trims Back FATCA

December 17, 2018

On December 13, 2018, the Internal Revenue Service issued proposed regulations that eliminate certain types of withholding under Sections 1471-1474 of the tax code, which are commonly referred to as FATCA. Under the proposed regulations, gross proceeds from the sale or other disposition of an asset will not be subject to FATCA withholding, and passthru payments will not be subject to FATCA withholding any earlier than two years after the publication of final regulations that define the term "foreign passthru payment." The proposed regulations also eliminate FATCA withholding on certain insurance premiums and provide other helpful guidance.

The purpose of FATCA is to reduce U.S. tax evasion by requiring certain "foreign financial institutions" to report information about U.S. holders of their non-publicly traded debt and equity interests and other "financial accounts," and requiring certain other foreign entities to disclose information about their substantial U.S. equity owners. Under the tax code, entities that fail to comply with FATCA may be subject to a 30% withholding tax on (i) U.S.-source income, (ii) gross proceeds from the sale or other disposition of an asset that produces U.S.-source income, and (iii) "passthru payments" attributable to U.S. assets. As mentioned above, the proposed regulations eliminate withholding on gross proceeds and defer withholding on passthru payments.

Taxpayers generally may rely on the proposed regulations.

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If you have any questions about the foregoing, please contact any member of our Tax Group.