

Client Alert.

April 23, 2012

IRS Issues Final Regulations Requiring Reporting of Deposit Interest Paid to Non-Resident Aliens

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On April 17, 2012, the Internal Revenue Service (the "IRS") issued final regulations requiring financial institutions to report to the IRS any payments of interest on deposits maintained at an office in the U.S.¹ made to non-resident aliens who are residents of certain countries with which the U.S. has entered into exchange of information agreements. The regulations apply to payments of deposit interest made on or after January 1, 2013, which means that the reporting requirement, typically due the following year, will become effective in 2014.

These regulations are closely related to the U.S. government's efforts to combat offshore tax evasion. As part of that effort, the Foreign Account Tax Compliance Act (commonly referred to as "FATCA") was enacted, requiring non-U.S. financial institutions to report information to the IRS on their U.S. account holders.² In addition, the U.S. has entered into tax treaties and exchange of information agreements that require cooperation and reciprocity in sharing information relating to tax enforcement. The regulations requiring financial institutions to report to the IRS any payments of deposit interest to non-resident aliens ensure that the IRS is in a position to share relevant information with other jurisdictions either as provided for under FATCA's framework or pursuant to an exchange of information agreement.

The relevant information must be reported by a financial institution on IRS Form 1042-S. For purposes of determining the country of residence of a non-resident client, a financial institution may rely on the permanent address provided by the client on IRS Form W-8BEN. In conjunction with the final regulations, the Treasury Department issued Revenue Procedure 2012-24, which identifies the countries with which the U.S. has an information exchange agreement. Therefore, deposit interest paid to a non-resident alien who is a resident of a country that does not appear on the list below is not subject to reporting. The countries with which the U.S. currently has an information exchange agreement in effect are:³

¹ Including a U.S. branch of a foreign financial institution.

² See our prior FATCA-related client alerts on Notice 2010-60, <http://www.mofo.com/files/Uploads/Images/100910FACTA.pdf>, Notice 2011-34, <http://www.mofo.com/files/Uploads/Images/110420-IRS-Guidance-FATCA.pdf>, Notice 2011-53, <http://www.mofo.com/files/Uploads/Images/110719-IRS-Announces-Phased-Implementation-of-FATCA.pdf>, and the proposed regulations, <http://www.mofo.com/files/Uploads/Images/120214-Withholdable-Payment.pdf>. For all FATCA updates, see our FATCA website at [KNOWFatca.com](http://www.KNOWFatca.com).

³ Rev. Proc. 2012-24. In addition, the U.S. already automatically exchanges information with respect to deposit interest with Canada.

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Antigua & Barbuda	Jersey
Aruba	Kazakhstan
Australia	Korea (South)
Austria	Latvia
Azerbaijan	Liechtenstein
Bangladesh	Lithuania
Barbados	Luxembourg
Belgium	Malta
Bermuda	Marshall Islands
British Virgin Islands	Mexico
Bulgaria	Monaco
Canada	Morocco
China	Netherlands
Costa Rica	Netherlands island territories: Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part)
Cyprus	New Zealand
Czech Republic	Norway
Denmark	Pakistan
Dominica	Panama
Dominican Republic	Peru
Egypt	Philippines
Estonia	Poland
Finland	Portugal
France	Romania
Germany	Russian Federation
Gibraltar	Slovak Republic
Greece	Slovenia
Grenada	South Africa
Guernsey	Spain
Guyana	Sri Lanka
Honduras	Sweden
Hungary	Switzerland
Iceland	Thailand
India	Trinidad and Tobago
Indonesia	Tunisia
Ireland	Turkey
Isle of Man	Ukraine
Israel	United Kingdom
Italy	Venezuela
Jamaica	
Japan	

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