

Important FATCA update for NAPSLO members

June 10, 2014

The Foreign Account Tax Compliance Act (FATCA) will take effect on July 1, 2014. FATCA provides IRS reporting requirements directed at foreign financial institutions and financial intermediaries in an effort to prevent tax evasion by U.S. citizens, U.S. residents and corporations through the use of offshore accounts. FATCA may apply to U.S. source insurance premiums to the extent such premiums are classified as “withholdable payments.” Members can refer to this [NAPSLO-issued Executive Summary and Legal Memorandum](#) for an overview of the regulation and help in understanding compliance procedures.

The IRS recently issued [Notice 2014-33](#) that somewhat relaxes the compliance schedule over the initial compliance period of FATCA for those that make a good faith effort to comply. The IRS stated calendar years 2014 and 2015 will be considered a “transition period” for purposes of IRS enforcement and administration of the due diligence, reporting, and withholding requirements of FATCA with respect to contracts entered into before year-end 2014. Therefore, so long as a required entity can demonstrate they have made a good faith effort to comply, the Notice indicates they will not be penalized with respect to such contracts.

It is very important to understand that the IRS has merely relaxed the implementation of FATCA for calendar years 2014 and 2015 with respect to 2014 contracts. FATCA is still scheduled to become effective July 1, 2014 and therefore this IRS Notice does not affect compliance obligations. As noted above, only those making good faith efforts to comply with FATCA may be granted relief from its enforcement.

Additionally, the [Council of Insurance Agents and Brokers announced](#) the development of a clearinghouse to retain the W-8BENE forms brokers should review and obtain from insurers prior to collecting premium from a FATCA related entity. Access from July 1 through December 31, 2014 will be at no cost.

Regarding FATCA generally, in the event a broker places business with a non-U.S. insurer, the broker will be responsible for determining if the company is either publicly traded or if the list of owners of the insurer includes U.S. citizens who could be held accountable for taxes. Thus, the broker must acquire a properly completed Form W-8BEN-E. If a broker is unable to determine either of those statuses, they may be responsible for withholding 30% of the premium. Many in the industry hoped the IRS would exempt the property and casualty industry from FATCA’s compliance requirements in advance of the July 1, 2014 date. When the IRS issued temporary guidance and forms in February, it did not provide an exemption. Industry representatives and some Members of Congress continue to appeal to U.S. Treasury Secretary Jack Lew for review of the rule and the industry’s exemption. However, no such exemption appears to be forthcoming. Therefore, NAPSLO members are encouraged to prepare for FATCA compliance.

Should you have additional questions about how to become FATCA-ready contact Keri Kish at keri@napslo.org.