

MARKET BULLETIN

REF: Y4718

Title	Foreign Account Tax Compliance Act (FATCA) Update
Purpose	For information. To update the Lloyd's Market on the current state of discussions with the IRS on an agreement to put Lloyd's members on a comparable basis to other insurers for FATCA purposes. The bulletin also includes an update on the deferral of the start date by the IRS and a clarification on reporting requirements for withholding agents.
Type	Event
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Date	2 September 2013
Deadline	None
Related links	http://www.treasury.gov/press-center/press-releases/Pages/tg1825.aspx http://www.irs.gov/PUP/businesses/corporations/TD9610.pdf http://www.irs.gov/file_source/pub/irs-drop/n-13-43.pdf

Current status of negotiations with IRS

As described in Bulletin Y4611 of 31 July 2012 and subsequent communications, Lloyd's and its US tax advisors at Sutherlands have been engaged in discussions with the US and UK revenue authorities for the purpose of clarifying how the new FATCA rules will apply in the Lloyd's context.

Our discussions with the US revenue authorities regarding FATCA are ongoing as the Internal Revenue Service (IRS) continue to perfect their rules and regulations, but we thought it would be helpful to provide you with the current status of those discussions. We emphasize that no final agreements have been reached but we believe that all the parties are working in good faith to address the unique issues that Lloyd's structure and current arrangements pose.

Pursuant to these discussions it is currently expected that rules similar to those already in place for QI (Qualified Intermediary reporting under Chapter 3) purposes will be adopted for FATCA purposes (which is under Chapter 4 of the US tax code). Our expectation is that this will permit Lloyd's syndicates to provide a common Lloyd's W-8 BEN with a single Lloyd's

identification number to each requesting withholding agent (i.e., those entities making withholdable payments to Lloyd's underwriters, including brokers making payments of US source insurance premiums). This will be similar to how the current QI rules work for Lloyd's (See Bulletin Y3021). If such an arrangement is reached Lloyd's will continue to collect W-8 BENs and other necessary member level information centrally and provide the information to the IRS as required by the current and any future agreements.

We expect that the US revenue authorities will clarify how these rules apply to Non-Financial Foreign Entities (NFFEs), such as Lloyd's, that are also QIs. Once they have done this over the coming months, Lloyd's will look to make progress as quickly as possible with the aim of concluding the agreement by the end of the year.

Other clarifications

Other points that are not necessarily unique to Lloyd's but that may be of interest to those in our market include:

1. **Effective date:** On 12 July 2013, the IRS, in Notice 2013-43, extended the implementation dates by 6 months for many of the withholding and due diligence requirements under FATCA. As a result, a withholding agent will not be required to withhold and should not be subject to any Chapter 4 reporting with respect to withholdable payments until after 30 June 2014. The 6 month extension does not affect the existing 2017 effective date that is already in place for withholding on certain gross proceeds, foreign pass-thru payments, and payments with respect to offshore obligations by persons not acting in an intermediary capacity.
2. **Grandfathering:** The current regulations as modified by Notice 2013-43 grandfather treatment for obligations outstanding on 1 July 2014. Under the regulations a withholdable payment does not include any payment made under a 'grandfathered obligation'. For this purpose a premium paid with respect to an insurance contract that is treated as a grandfathered obligation is treated as a payment made under a grandfathered obligation. An obligation is considered outstanding on 1 July 2014 if a legally binding agreement establishing the obligation was executed before such date. Any material modification to such an obligation will result in the obligation being treated as newly issued as of the effective date of such modification. Whether a material modification has been made is determined on the facts and circumstances. Therefore, an insurance contract entered into on or prior to 1 July 2014, even if covering a period subsequent to 1 July 2014 should be a grandfathered obligation. This should be true even if the contract premium is based on a particular formula or set of facts that will not occur until after that date, so long as the formula is agreed and not modified after 1 July 2014. If however the terms of the contract are not certain and/or material elements of the coverage remain to be agreed after 1 July, 2014 the contract may not be considered to be grandfathered.

3. Reporting for withholding agents: We understand that the US revenue authorities intend to clarify that 1042 reporting for Chapter 4 purposes for payments not otherwise subject to Chapter 3 reporting, such as insurance premiums, only applies to payments that are otherwise subject to withholding. So for example insurance premium payments made to an NFFE that is an excepted NFFE, or that is not an excepted NFFE but one that has no substantial US owners, are NOT subject to reporting under section 1042.

We will provide you with further information as it becomes available. In the meantime if you have any questions please call Helen Halliwell +44 (0)20 7327 6859.