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January 7, 2014

The Honorable Mark Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

John Koskinen
Commissioner
Internal Revenue Service
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Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Report on the FATCA Final Regulations: PFFI Rules; IGAs; Interaction Between the Regulations and Chapters 3 and 61

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit to you this report on selected topics related to the final regulations under Sections 1471 through 1474 of the Internal Revenue Code (commonly referred to as "**FATCA**") issued on January 28, 2013 and amended on September 10, 2013 (the "Final Regulations").

The Department of the Treasury ("**Treasury**") and the Internal Revenue Service (the "**IRS**") have continued to exercise a tremendous effort to provide prompt, useful guidance to foreign financial institutions ("**FFIs**") and other market participants under FATCA, as well as to enter into intergovernmental agreements ("**IGAs**") related to the implementation of FATCA, and we commend you for doing so.

In this report, we have addressed three topics which we believe are central to the FATCA regime: the rules in the Final Regulations that deal with "participating FFIs" ("**PFFIs**") and the agreements that PFFIs are required to enter into ("**FFI** Agreements"); the proper interpretation of IGAs and the interaction between these agreements and the Final Regulations; and coordination of taxpayers' withholding and reporting obligations under FATCA with their obligations under the rules of chapter 3 (withholding on U.S.-source fixed or determinable, annual or periodical income paid to foreign persons) and chapter 61 (information reporting on payments to non-exempt U.S. persons).

Our principal recommendations concerning the PFFI rules deal with the circumstances in which a PFFI will be considered to have a material breach or event of default under its FFI Agreement, as well as the procedures that apply when there has been an event of default. In particular, the Final Regulations provide that it is an event of default if a PFFI fails to achieve a significant reduction over a period of time in the number of its accountholders or payees that are either "recalcitrant accountholders" (i.e., accountholders that fail to provide to the PFFI the information and waivers called for by the Final Regulations) or FFIs that have not become PFFIs and are not otherwise deemed to be compliant with FATCA ("**nonparticipating FFIs,"** or **"NFFIs**"). We recommend this rule be revised to state there is an event of default only if a PFFI fails to use reasonable efforts to reduce the number of its accountholders that either are recalcitrant accountholders or NFFIs. For purposes of such a revised rule, we believe that "reasonable efforts" should be defined through specific requirements that take into account the extent to which the PFFI is able to control whether it has dealings with recalcitrant accountholders and NFFI accountholders, and/or to control whether those accountholders take steps either to provide the information and waivers required from them (in the case of recalcitrant accountholders) or to become PFFIs (in the case of NFFIs). In addition, we also suggest adding a reasonable cause exception for some of the more easily triggered events of default under an FFI Agreement.

With respect to IGAs, the report examines the model IGAs that have been published, and notes that some of the central concepts in the model IGAs differ from those used in the Final Regulations. In particular, the Final Regulations generally look to the assets and activities of each entity that is a regarded entity for U.S. federal income tax purposes, determine the status of that regarded entity as an FFI or a "nonfinancial foreign entity" ("**NFFE**"), and then apply the relevant reporting and withholding rules. By comparison, in general the model IGAs look separately at each disregarded entity or branch owned by a regarded entity, and test the status of the disregarded entity or branch as a "Financial Institution" (a term used in the IGAs with a definition that generally corresponds to an "FFI" under the Final Regulations) or an NFFE. As we explain in this report, although the Final Regulations contain some provisions that are meant to reconcile this difference in approach, these provisions should be clarified; and the IGAs' own approach to disregarded entities and branches should be made more internally consistent. In addition to addressing those issues, guidance also should be provided regarding the reporting obligations of U.S. financial institutions with respect to their accountholders who reside in countries that have Model 1A (reciprocal) IGAs.

Finally, the report addresses certain issues about coordination of reporting and withholding under FATCA with the rules under chapters 3 and 61. In particular, we provide suggestions about what types of FFIs should be entitled to be qualified intermediaries ("**QIs**"), withholding partnerships ("**WPs**") or withholding trusts ("**WTs**") for purposes of chapters 3 and 61, as well as the FATCA related requirements that should be imposed on QIs, WPs and WTs pursuant to upcoming revisions to the IRS's standard QI, WP and WT agreements.

In addition to the recommendations noted above, the report also makes a number of other recommendations about the PFFI rules, IGAs, and the interaction of FATCA with chapters 3 and 61.

We very much appreciate your consideration of our recommendations and would be happy to discuss them with you or provide additional assistance.

Respectfully submitted,

David H. Schnabel
Chair

Enclosure

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