



EXEC NOTES Webinar Summaries

NRA (1441) Withholding, FATCA, and Other Reporting Requirements

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Summary: Discussing the tax compliance rules related to accounts payable in relation to FATCA (Foreign Account Tax Compliance Act), NRA 1441

Audience: Finance and accounting professionals

NRA (1441) Withholding, FATCA, and Other Reporting Requirements

What's Happening

The IRS is aggressively pursuing withholding agents' compliance with the 1441 rules, FATCA (Foreign Account Tax Compliance Act) and other regulations, in order to offset offshore tax evasion and recover lost revenue. We're seeing a lot more auditing in this space than we previously had.

Key Issues and Risks

Noncompliance can result in severe tax penalties levied by the IRS. FATCA rules specifically make the company paying suppliers responsible for tax regulatory compliance. The penalty can be up to 30% of the payment.

Additional Resources

- [FATCA - What Accounts Payable Needs to Know \(Tipalti\)](#)
- [FATCA Frequently Asked Questions \(Deloitte\)](#)
- [Recording of this Webinar](#)



▶ Watch Recording



Best Practices / Solutions

Every finance and accounting organization can employ some basic best practices to avoid an audit, streamline answers during the audit process, or reduce the risk of an IRS-levied fine. Yet outside of hiring qualified tax lawyers, the only truly compliant approach may be to use technology to solve the form collection and approval workflow.

Current US Withholding and Reporting Rules

If a withholding agent is making payments to a US person then there's potential 1099 reporting. If we don't have an individual's TIN or SS number at the time of payment, the payer is required to have a 28% backup withholding on the payment.

NRA Withholding and Form 1042-S Reporting

Prior to making a payment, the withholding agent needs to determine the character and source of payment to the extent of US-source FDAP income. For these types of payments there is year-end reporting due March 15th. The IRS is aggressively pursuing 1441 compliance.

What is FDAP?

FDAP is fixed or determinable, annual, periodical income. It's really all types of income other than gains from a sale of property. It can include compensation, rents, royalties, etc.

What is the source of the Payment?

For royalties, the source is where it's used. For rent, the source is where the property is. Regulations have mandatory presumption rules and if the withholding agent cannot determine the source at the time of payment, it has to presume the source is the US.

Documentation

The key to 1441 is documentation. It's how the withholding agent determines if the payee is a US or non-US person, or beneficial owner. The payee may be some type of intermediary. Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Form 8233, Form W-8EXP, Form W-8IMY are all forms that must be considered, depending on the supplier's situation. Accounts payable departments should request forms from suppliers, which is not terribly difficult when dealing with domestic suppliers and their W-9's, but may become more challenging with the Form W-8 Series.

Withholding

The statutory rate of withholding is 30% at time of payment unless documentation is on file to support reduced rate. If you don't have a W-9 or tax ID number for a US person and you don't impose a 28% backup withholding, the withholding agent is liable for it. You can't remediate after the fact.



Best Practices / Solutions

The Road to FATCA

The US government found there were large amounts of money lost through offshore investments. In response it initiated FATCA, enacted in 2010 to try to remediate this.

FATCA's Impact on Nonfinancial Entities

The IRS imposes a punitive tax on noncompliant entities. It's very important for withholding agents to know when they need to make a withholdable payment to these entities and they are obliged to document these accounts.

FATCA for US Withholding Agents (USWA)

USWAs must withhold 30% when they make a withholdable payment to a noncompliant entity payee.

What is a withholdable payment?

Start with US FDAP payments. Beginning in 2019, withholding can also include gross proceeds from the sale of property that could generate US dividends.

3 Steps to Classifying Withholding Payments

- Is it FDAP income?
- Is it a US source?
- Does any payment exception apply?

Withholding Payment Exclusions

Payment of interest or OID on short-term obligations, effectively connected income, nonfinancial payments, gross proceeds from sales of excluded property, fractional shares, offshore payments of US source FDAP income prior to 2017. The first three are more important for the US.

Deadlines for Withholding and Documentation

All deadlines have passed. The last transition release period ended July 2016. We have passed that time period when you are required to identify if you make a withholdable payment. Be sure you have appropriate tax documentation.

Coordination of FATCA Withholding with Chapters 3 and 61

The starting point is to determine if you're making a payment to a non-US person or US person. There are about 40 types of FATCA statuses for a non-US entity so there is still a lot of confusion





"It's important for a company to know where it stands prior to an examiner coming to look at things. Review your documentation as if you were the IRS, pull a sample of forms if you have a large population of non-US vendors, review those, and make sure they are completed properly; that all the treaty forms are proper and they're signed and dated. Review the documentation you have with a very close eye. Review the withholding that you impose to make sure the documentation that you have supports those rates if you reduce them. Review your deposits to make sure they're timely and review your 1042 reporting."

For more information on automating supplier tax compliance, visit our website.

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