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TO: Distribution

FROM: Burt, Staples & Maner, LLP

RE: IRS Provides Overview of Foreign Financial Institution (“FFI”) Agreement Administration Processes

IRS representatives provided a long-awaited overview of FFI Agreement registration procedures during the Executive Enterprise Institute’s 24th Annual International Tax Withholding Conference held June 5-6. While the IRS has spent considerable time working through the issues inherent in such a broad-scale process, the plans as presented will likely pose considerable implementation challenges for participating foreign financial institutions (“PFFIs”).

Of key importance to PFFIs is the role of the Responsible Officer (“RO”) in the registration process. Under the FATCA proposed regulations, ROs are responsible for certifying to the IRS that a PFFI has completed all mandatory due diligence processes at the conclusion of Years 1 and 2 of the FFI Agreement, confirming that a PFFI has not engaged in assisting clients in the avoidance of FATCA, certifying the PFFI’s compliance with all provisions of the FFI Agreement on a periodic basis, and disclosing material failures of compliance. In addition to these responsibilities, the RO will generally be responsible for initiating the online FFI registration process and signing the FFI Agreement. The IRS has indicated that each FFI within an affiliated group must assign its own RO, but will consider whether such a group could instead assign an RO for the group.

To initiate the FFI registration process, the RO’s identity must be verified. The RO will need to electronically provide his/her name, title, address, phone number, email address, and either a Social Security Number (“SSN”) or Individual Tax Identification Number (“ITIN”). An RO that does not have a SSN or ITIN can alternatively be verified by completing new Form 8956 and providing “appropriate documentation.” While FFIs with U.S. affiliates may have ROs with an SSN or ITIN, the majority will not. Even those ROs who already have either SSNs or ITINs will want to seriously consider whether they are willing to mingle their personal and business affairs to this extent. Once the RO’s identity is verified, the IRS will issue the RO a FATCA Individual Identification Number (“FIIN”) that will be used to sign the FFI Agreement.

While the RO will need to initiate the registration process, he/she will have the opportunity to identify up to five Points of Contact, including local or U.S.-based third parties, who can assist in completing the process and managing ongoing administrative items. Alternatively, the RO can designate an Authorized Third Party who can complete the entire registration process on the RO’s behalf, including signing the FFI Agreement. In a welcome development, the IRS personnel confirmed that they anticipate the RO should be able to delegate these responsibilities to U.S.-licensed tax professionals as well as in-house personnel.

For expanded affiliate groups, the initial step in the registration process is registration of the Lead FFI. The Lead FFI is then responsible for listing all members of the group, who will then independently complete their own registration processes. Each registering FFI within the expanded affiliated group must then execute its own agreement. In order to register, each FFI will need to have the following information available: mailing and physical address of FFI, types of accounts maintained by FFI, date and country of FFI incorporation or organization, FFI country of residence for tax purposes, countries in which the FFI has branches, and QI/WP/ WT information as applicable. The group as a whole will not be considered registered until all agreements have been executed. Only then will each FFI receive its FFI-EIN.

An FFI will be notified that the IRS has approved its application and receive an FFI-EIN shortly after signing its FFI Agreement, ideally within 24 hours. Each PFFI will also receive a FATCA ID. The FATCA ID is a new ID that will be assigned to each PFFI, and included as part of the publicly available listing of PFFIs. This new ID is intended to address privacy concerns about including FFI-EINs on the listing.

A PFFI's FATCA account is user-maintained, meaning that each Lead FFI is responsible for maintaining the listing of the expanded affiliate group, and each PFFI is responsible for ongoing maintenance of its descriptive information, including contact information for the RO. It is clear the FFI registration process is not a once-and-done activity, but rather an ongoing process. PFFIs should consider the time involved in these required maintenance activities when developing their compliance plans and budget for the necessary internal or external resources to maintain this information.

The FFI registration portal will be linked to the website <http://www.irs.gov/FATCA> which is the IRS's home page for FATCA information. The site currently contains a variety of FATCA resources including the newly released unofficial draft Forms W-8BEN (for individuals) and W-8BEN-E (for entities), as well as an opportunity to register for the IRS FATCA news and information e-newsletter.

It is encouraging to see the progress the IRS has made in developing these critical administrative processes; however, there are still key issues that should be resolved for effective FATCA administration. Chief among these challenges for the IRS is developing workable processes for PFFI expanded affiliate groups to provide consolidated certifications. Announcing these processes quickly will be critical to providing expanded affiliated groups with the necessary time to develop robust governance plans.

Similarly, FFIs intending to become PFFIs should be making plans to collect the information necessary for completion of the FFI Agreement process – identifying ROs (and obtaining any required FIINs), gathering required information, and developing processes to track new data elements. This is especially critical for those expanded affiliate groups which will need to register hundreds, if not thousands, of FFIs. PFFI expanded affiliate groups targeting June 30, 2013, to have all FFIs registered will want to allow sufficient time for the registration process. All FFIs should also incorporate FFI Agreement maintenance into daily operations.