

AN ALERT FROM THE BDO FINANCIAL INSTITUTIONS
& SPECIALTY FINANCE PRACTICE

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FINANCIAL INSTITUTIONS & SPECIALTY FINANCE

► SUBJECT

BANKING REGULATORY AGENCIES ISSUE ADDENDUM TO TAX ALLOCATION POLICY

► DETAILS

The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Office of Thrift Supervision have recently issued an addendum to their policy regarding the allocation of income taxes by holding companies and their insured depository institutions (IDIs). The Agencies' guidance, titled Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure, seeks to provide clarity around the relationship between banking organizations and their IDIs when it comes to tax payments and income tax refunds—a topic that has recently resulted in varying court decisions.

Holding companies and their IDIs must enter into written tax allocation agreements that are specific to their needs. However, due to a number of recent court decisions, in which bankrupt holding companies were not required to return held income tax refunds to IDIs, the issued addendum requires revisions to these agreements that protect IDIs' tax refund ownership rights.

The addendum states that all consolidated groups should review their tax allocation agreements and amend the language to:

1. Clearly and explicitly acknowledge that there is an agency relationship between the holding company and its subsidiary IDIs as it pertains to tax refunds, excluding and eliminating any other language that suggests the contrary.
2. Express that the amount and timing of refunds are to be no less beneficial than if separate returns were filed by subsidiary IDIs.

The Agencies' addendum goes on to explain how the inclusion, or exclusion, of this language may be subject to sections 23A and 23B of the Federal Reserve Act (FRA). Tax allocation



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agreements that do not clearly and explicitly establish the agency relationship between holding companies and their IDIs are subject to section 23A of the FRA, due to guidelines regarding the collateralization of loans and credit from a bank to its affiliates. Furthermore, section 23B of the FRA requires that, should a holding company receive tax refunds on behalf of an IDI, it should promptly transfer said refunds to the IDI, as the amount and timing of refunds should be as favorable as it would be if the IDI filed taxes as a separate entity.

While each tax allocation agreement will differ, the Agencies have required that all elements of their issued addendum be incorporated into the agreements no later than October 31, 2014.

BDO's financial institutions professionals are available to provide counsel and guidance regarding the impact of the policy addendum and the process of revising tax allocation agreements. For more information, contact Glenn James, partner and Financial Institutions Practice leader for the New York region, at gjames@bdo.com or Steve Maniaci, senior director in Grand Rapids at smaniaci@bdo.com.

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