

## F.A.T.C.A. 24/7

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## FOREIGN FINANCIAL INSTITUTIONS: WHO DEALS WITH THE I.R.S. ON F.A.T.C.A.?

On August 1, the Internal Revenue Service (“I.R.S.”) clarified in its F.A.T.C.A. Frequently Asked Questions (“F.A.Q.”) that the I.R.S.’s main contact with a foreign financial institution (“F.F.I.”) will be the “responsible officer” identified under Question 10 of the registration form (*i.e.*, Form 8957, which should be completed on the I.R.S. F.A.T.C.A. portal and not in paper form). However, the I.R.S. reiterated that the responsible officer can authorize as many as five additional points of contact to receive F.A.T.C.A.-related information regarding the F.F.I. and to take other F.A.T.C.A.-related actions on behalf of the F.F.I.

Additionally, the responsible officer will receive an automatic e-mail notification to check the F.F.I.’s F.A.T.C.A. message board when certain messages are posted. For example, when the F.F.I.’s registration status changes, the responsible officer will receive an e-mail notification. Such e-mail notifications will include the last several characters of the F.F.I.’s F.A.T.C.A. identification number so that the officer can identify which F.A.T.C.A. account is being referred to. If no e-mail notifications are received, the responsible officer must verify that the e-mail address entered in Question 10 of the registration form is correct, as well as ensure that their spam blocker is not preventing e-mail notifications from getting through. Note that the responsible officer can only list one e-mail address on Question 10 of the registration form.

## I.R.S. LIST OF REGISTERED F.F.I.’S

On August 1, the I.R.S. also updated its F.A.Q. on the list of registered F.F.I.’s (“F.F.I. List”). The I.R.S. stated that it is possible that an F.F.I. that appears in the search tool on the I.R.S.’s website will not appear in a downloaded F.F.I. List in C.S.V. format.

Because some C.S.V.-compatible spreadsheet and database applications may only display a maximum number of records, an F.F.I. that is located on the list beyond that maximum limit may not be seen. To address this problem, the I.R.S. suggests that taxpayers try to use another spreadsheet and database application or text editor to open the downloaded C.S.V. file.

## F.A.T.C.A.'S IMPACT ON A QUALIFIED INTERMEDIARY OR WITHHOLDING FOREIGN PARTNERSHIP OR TRUST

The I.R.S. F.A.T.C.A. F.A.Q. has also been updated on Qualified Intermediaries, Withholding Foreign Partnerships and Withholding Foreign Trusts. Beneficial owners serving on behalf of an intermediary, partnership, or trust may find it advantageous to become a Qualified Intermediary ("Q.I."), Withholding Foreign Partnership ("W.P."), or Withholding Foreign Trust ("W.T."), since holding such status may lower the U.S. withholding taxes imposed on those beneficial owners. The I.R.S. states that although F.A.T.C.A. has affected this area and there is a new set of Q&A's addressing this, the process of becoming a Q.I., W.P., or W.T. has not been changed by F.A.T.C.A.

Q.I., W.P., or W.T. status can only be obtained by completing and submitting a Form 14345 ("Q.I. Intermediary Application") and Form SS-4 ("Application for Employer Identification Number") directly to the Q.I. Program. Interested Q.I.'s, W.P.'s, or W.T.'s should submit the required paperwork to the Q.I. program and separately use the F.A.T.C.A. registration portal to obtain a G.I.I.N. for F.A.T.C.A. purposes. F.F.I.'s cannot become a new Q.I., W.P., or W.T. through the F.A.T.C.A. portal.

Existing Q.I.'s, W.P.'s, and W.T.'s are required to renew their Q.I. agreements through the F.A.T.C.A. registration website as part of their F.A.T.C.A. registration process. All Q.I., W.P., or W.T. agreements that would otherwise expire on December 31, 2013 were automatically extended until June 30, 2014. If renewal has not yet been sought, it should be requested as soon as possible.

## OTHER JURISDICTION F.A.T.C.A. REGIMES

F.A.T.C.A. is no longer just a U.S. tax law concept. The U.K. has adopted its own F.A.T.C.A.-type legislation whose purpose is to discover the U.K. taxpayers who may be holding their money outside the U.K. The Isle of Man, which is on the U.S. list of I.G.A.'s, was the first country to sign an intergovernmental agreement with the U.K. that deals with U.K. taxes. We expect that other countries may follow the lead of the U.S. and the U.K. and may use the U.S. F.A.T.C.A. regime as a model for what they may adopt.

## FURTHER I.G.A. UPDATES

While several dozen F.A.T.C.A. Inter-Governmental Agreements ("I.G.A.'s") have been signed, an I.G.A. is only the first step for each of those countries to become F.A.T.C.A. compliant. The next step is for the country to release regulations or guidance on how F.A.T.C.A. is to be applied in that country. While the F.A.T.C.A. regulations may be utilized as a model for what may be done, each country has its own unique I.G.A. and its own internal views on what should be done that will shape that guidance. It should be noted that the implementation legislation must be in line with the signed I.G.A. and may not frustrate the purpose of the I.G.A.

This last month, the British Virgin Islands released a draft of their proposed guidance notes for dealing with F.A.T.C.A. under their I.G.A. A few countries, such as the U.K., Canada, and the Cayman Islands, have come out with draft guidance notes, but this process is just beginning. Every F.F.I. in an I.G.A. country will have to keep track of this.

At this time, the countries that are Model I I.G.A. partners by execution of an agreement or concluding an agreement in principle are:

Algeria	Denmark	Jersey	Serbia
Anguilla	Dominica	Kosovo	Seychelles
Antigua & Barbuda	Dominican Republic	Kuwait	Singapore
Australia	Estonia	Latvia	Slovak Republic
Azerbaijan	Finland	Liechtenstein	Slovenia
Bahamas	France	Lithuania	South Africa
Bahrain	Georgia	Luxembourg	South Korea
Barbados	Germany	Malaysia	Spain
Belarus	Gibraltar	Malta	St. Kitts & Nevis
Belgium	Greenland	Mauritius	St. Lucia
Brazil	Grenada	Mexico	St. Vincent & the Grenadines
British Virgin Is.	Guernsey	Montenegro	Sweden
Bulgaria	Guyana	The Netherlands	Thailand
Cabo Verde	Haiti	New Zealand	Turkey
Canada	Honduras	Norway	Turkmenistan
Cayman Islands	Hungary	Panama	Turks & Caicos
China	India	Peru	Ukraine
Colombia	Indonesia	Poland	United Arab Emirates
Costa Rica	Ireland	Portugal	United Kingdom
Croatia	Isle of Man	Romania	Uzbekistan
Curacao	Israel	Qatar	
Cyprus	Italy	Saudi Arabia	
Czech Republic	Jamaica		

The countries that are or will soon become Model II I.G.A. partners are: Armenia, Austria, Bermuda, Chile, Hong Kong, Iraq, Japan, Moldova, Nicaragua, Paraguay, San Marino, Switzerland, and Taiwan.

The list of countries having an I.G.A. keeps on growing, with the only limit being the number of countries in the world.