

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

**Author**  
Philip Hirschfeld

**Tag**  
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### ISRAEL IS BECOMING THE I.R.S.'S STRICTEST ENFORCER OF F.A.T.C.A.

On May 4, 2014 Israel reached a Model 1 agreement with the U.S. Israel has shown a strong eagerness to accept F.A.T.C.A. In 2012, the Association of Banks in Israel urged the country's central bank, the Bank of Israel, to ask the government to reach a F.A.T.C.A. agreement with the United States. Earlier in 2014, even before the signing of the F.A.T.C.A. agreement, the Bank of Israel ordered Israeli financial institutions to begin to implement F.A.T.C.A. procedures, including appointing an officer to oversee F.A.T.C.A. compliance, identifying U.S. customers, making them sign I.R.S. declarations (such as I.R.S. Form W-9 or Form W-8BEN), and expelling any clients unwilling to do so. Israel has shown strong support and an eagerness to uphold the enforcement of F.A.T.C.A.

The Israeli Ministry of Finance has drafted proposed regulations that would impose criminal penalties on Israeli financial institutions (including banks, brokerage houses, and insurance companies) that do not comply with F.A.T.C.A. reporting obligations.

### CANADIANS CHALLENGE F.A.T.C.A. AGREEMENT

On August 11, through the Alliance for the Defense of Canadian Sovereignty, two U.S.-born Canadians filed a lawsuit against the Canadian government asserting that the Canadian I.G.A. was unconstitutional.

A statement of claim at the Federal Court of Canada in Vancouver was filed against the defendant, the Attorney General of Canada, contesting the Model 1 reciprocal I.G.A. that Canada and the United States signed on February 5.

In the filing, the plaintiffs alleged that Annex 1 of the Canada-U.S. I.G.A., which sets out due diligence procedures for Canadian financial institutions, and Part XVIII of the Income Tax Act, which requires Canadian financial institutions to undertake due diligence procedures, do not apply to provincially regulated financial institutions on the basis of §§92(13) and 92(16) of the Constitution Act of 1867.

Specifically, the claim asserts that the I.G.A. is inconsistent with the provisions of the unwritten principles of the Constitution, in particular to Canada not giving up its sovereignty to a foreign state. Also, the plaintiffs argued that the provisions violated §§7, 8, and 15 of the Canadian Charter of Rights and Freedoms concerning rights

to liberty and security, rights to security against unreasonable search and seizure, and rights to the equal protection and equal benefit of the law without discrimination.

Apart from the invalidity of the I.G.A., the claim does not directly challenge F.A.T.C.A.'s application to the Canadian financial institutions. As a result, if the claim should succeed, the Canadian financial institutions will still have to comply with F.A.T.C.A. for elimination of the potential F.A.T.C.A. withholding tax, but without the benefit of the I.G.A.

## **PRE-EXISTING TREATMENT FOR OBLIGATIONS OF INTERMEDIARIES, FLOW-THROUGH ENTITIES**

As of August 11, withholding agents can treat obligations held by intermediaries and flow-through entities as pre-existing under F.A.T.C.A. until the end of the year. The update was made to the frequently asked questions in an answer stating that if they are issued, opened, or executed before January 1, 2015, withholding agents may rely on pre-F.A.T.C.A. Form W-8's to document the holder of the obligations.

## **FOREIGN F.A.T.C.A. REQUIREMENTS MAY BE MORE STRINGENT THAN F.A.T.C.A. ITSELF**

The I.G.A.'s signed by each nation have differences stemming from specific laws and types of financial institutions in the various jurisdictions. Obligations and penalties that foreign governments may impose to implement F.A.T.C.A. could create stricter compliance obligations than F.A.T.C.A. itself does.

France has implemented a domestic law that would levy a small per-account fine on institutions deemed non-compliant with F.A.T.C.A. reporting obligations. Specifically, France has already inserted an article into its tax code to address F.A.T.C.A. The new provision imposes a fine of €200 (\$265) per customer for institutions failing to report F.A.T.C.A. information to the French tax authority. Additionally, jurisdictions are free to impose a stricter standard, such as requiring reporting of accounts under \$50,000 or setting tighter deadlines.

## **SIGNIFICANT I.G.A. COUNTRIES ADDED**

On August 8, after a long protracted time period, Sweden has finally signed a Model 1 I.G.A. Subsequent modifications of the Swedish law were made public on August 11 in a proposal to the Ministry of Finance. The legal changes to implement the treaty are expected to go into effect by April 1, 2015.

On August 12, Italy's parliament broke for its summer recess without ratifying the agreement necessary for F.A.T.C.A. to enter into force, and it was not clear when the measure would be taken up when lawmakers return in September.

*“Obligations and penalties that foreign governments may impose to implement F.A.T.C.A. could create stricter compliance obligations than F.A.T.C.A. itself does.”*

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

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

The countries that are Model II partners are: Armenia, Austria, Bermuda, Chile, Hong Kong, Iraq, Japan, Moldova, Nicaragua, Paraguay, San Marino, Switzerland, and Taiwan.

This list is expected to continue to grow.

