

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

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### Tags

F.A.T.C.A.  
I.G.A.

### BITCOIN ACCOUNTS MAY BE SUBJECT TO F.A.T.C.A. AND F.B.A.R. REPORTING

Bitcoin and other virtual currency accounts held in foreign exchanges may be treated as a foreign financial account and thus be subject to F.B.A.R. reporting. Eventually, it is even possible that the foreign exchanges themselves may be considered foreign financial institutions (“F.F.I.’s”) that have to report the accounts to the I.R.S. under F.A.T.C.A.

This view follows caselaw where a court found that online accounts held for the purpose of foreign online gambling had to be reported on an F.B.A.R.

Currently, the I.R.S. treats virtual currency as property. However, some claim that it is only a short hop to apply the court's ruling in the online gambling case to digital currency accounts.

Speaking at the fall meeting of the American Bar Association Section of Taxation, a senior I.R.S. official said the I.R.S. doesn't have a stance yet on whether the currency is subject to F.B.A.R. or F.A.T.C.A. reporting, even though the agency is well aware of the issue.

### RELAXED DEADLINE FOR REPORTING ACCOUNTS AS PRE-EXISTING

On November 17, the I.R.S. published a corrected amendment under which F.F.I.’s can treat all accounts that were opened before the date on which the F.F.I. signed an agreement with the I.R.S. to participate in F.A.T.C.A. (an “F.F.I. Agreement”) as pre-existing accounts for 2014 reporting purposes. Before this announcement was made, only accounts opened on or before June 30, 2014 were treated as pre-existing accounts.

Pre-existing accounts valued at less than U.S.\$1 million which were not previously documented as U.S. accounts may be electronically searched, and if no U.S. indicia is found, no further search of records or contact with the account holder is required. Therefore, categorizing more accounts as pre-existing accounts is an important relaxation for F.F.I.’s that signed an F.F.I. Agreement after July 1, 2014 and may be short on time to perform the required due diligence.

## ISRAELI TAX BENEFITS FOR OLIM IMPEDE INTERNATIONAL TRANSPARENCY

Israel's State Comptroller said Israel should set a ceiling for the tax reporting benefits it gives an "Ole Hadash" to avoid abuse and tax evasion. To encourage immigration to Israel, Israel allows new immigrants ("Olim") and returning residents a ten-year tax exemption on income earned abroad. However, it was found that in 17% of all cases examined, the exemption was abused and used to evade taxes outside Israel and to launder funds. The Comptroller said, "The exemption does not meet international standards of transparency and exchange of information, and there is a concern that Israel could be infiltrated by funds derived from crime." The O.E.C.D. has also objected to the benefit. As a result, while a proposal to cancel the provision allowing the benefit, or at least the reporting exemption, failed in 2013, the Israeli tax authority has been gradually tightening oversight of the benefits' conditions for the past four years. The provision allowing for the exemption was extended until 2018, when the issue will be revisited by the Israeli Parliament.

## CANADIAN I.G.A. FACES CONSTITUTIONAL CHALLENGE IN COURT

Canada's federal government has rejected assertions by two Canadian citizens born in the U.S. that the I.G.A. signed between Canada and the U.S. violates Canada's Charter of Rights and Freedoms, as well as an unwritten principle of the Canadian constitution.<sup>27</sup> The federal court hasn't yet set a date to hear oral arguments in the case.

The government claims that the I.G.A.'s provisions are constitutional because they don't cede Canada's sovereignty, and that if they are treated as violating the Charter rights, the infringements are justified because they are needed to relieve Canadian financial institutions and their clients from the "crippling" consequences of noncompliance with F.A.T.C.A. and to implement Canada's international commitments to share tax information to better enforce tax laws.

If Canadian F.F.I.'s were unable to comply with F.A.T.C.A., they would not be able to operate and invest in the U.S., nor would they be able to invest in non-U.S. jurisdictions if the investment was made through F.A.T.C.A.-compliant institutions. Complying without an I.G.A. would not be as beneficial as under an I.G.A. The I.G.A. relieves F.F.I.'s from having to file reports directly to the I.R.S., eliminates concerns about compliance with privacy laws, and clarifies which type of accounts may be exempt from reporting. It also exempts certain smaller deposit-taking F.F.I.'s from F.A.T.C.A. and exempts F.F.I.'s from the regulations' requirement to close certain client accounts.

The government added that any privacy implications are "minimal" and any potential infringement of privacy or other Charter rights is justified by the I.G.A.'s

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<sup>27</sup> *Virginia Hillis v. Attorney Gen. of Canada*, Federal Court of Canada, No. T-1736-14, *Statement of Defence* filed 11/10/14.

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objectives of reducing the U.S. legislation's impact on Canadian individuals and F.F.I.'s. Officials stated, "Those objectives are of sufficient importance to warrant limiting any right which may be infringed, and any infringement is proportional to the objectives and to the benefits conferred by the impugned provisions."

## **DATA PROTECTION AUTHORITIES WILL NOT ATTEMPT TO BLOCK OR DELAY F.A.T.C.A. COMPLIANCE**

Reporting under FA.T.C.A. is scheduled to begin in 2015. The E.U.'s executive branch has said that it is up to E.U. member countries to ensure they comply with national and E.U. data privacy laws while implementing F.A.T.C.A. under the applicable I.G.A., but that it may nevertheless intervene if it determines that a member state's F.A.T.C.A. implementation does not comply with E.U. data protection legislation.

As key European countries gear up for this automatic tax information exchange, certain persons questioned how data protection authorities ("D.P.A.'s") will treat such exchanges and whether they will delay reporting compliance. Bloomberg BNA contacted various European D.P.A.'s and learned that D.P.A.'s are not willing to block or delay F.A.T.C.A. information exchange on data protection grounds. Moreover, France, Germany, and the U.K. have already passed laws to implement F.A.T.C.A. into their own tax code, imposing fines on institutions failing to report F.A.T.C.A. information to the tax authorities for an automatic exchange with the I.R.S. under the I.G.A.

Most countries' D.P.A.'s mentioned they would rather focus on working collectively at the E.U. level to assure their country is complying with data protection laws. Other countries, such as France, plan to also work individually and "test" the system once it is up and running. The U.K., which was the first country to sign a F.A.T.C.A. I.G.A., allows the Information Commissioner Office to monitor and audit compliance with U.S. data protection laws. In theory, the Commissioner may block information exchange that violates those laws, but it is not believed that it will do so, as such exchange is a result of a mechanism established for international cooperation.

## **HONG KONG, BARBADOS, BULGARIA, CYPRUS AND ICELAND SIGN AN I.G.A.**

The Hong Kong I.G.A., which was treated as in effect since May 9, was officially signed on November 13. The I.G.A. signed is a Model 2 I.G.A., which requires direct reporting to the I.R.S. by F.F.I.'s residents in Hong Kong. The I.G.A. requires Hong Kong F.F.I.'s to register themselves and negotiate separate, individual agreements with the I.R.S. to share information on their U.S. account holders. The first round of reporting doesn't start until March 2015. Under such individual agreements, Hong Kong banks have to get the consent of their U.S. account holders before they can give information to the I.R.S.

Barbados and the U.S. signed a Model 1 I.G.A. on November 17. The Barbados Minister of Industry, International Business, Commerce and Small Business



Development said that the signing of the agreement represents one of the “salient pillars” in the transformation of how Barbados interacts with clients. The agreement has been treated as in effect since May 27, 2014, when Barbados signed the agreement in substance.

Bulgaria and the U.S. signed a Model 1 I.G.A. on December 5. The agreement has been treated as in effect since April 23, 2014, when Bulgaria signed the agreement in substance.

Even though Cyprus and the U.S. did not sign an I.G.A. until December 2, 2014, a Model 1 I.G.A. between Cyprus and the U.S. was treated as in effect by the U.S. Treasury as of April 22, 2014. The Cypriot government announced it has signed an I.G.A. with the U.S. as part of its adoption of F.A.T.C.A. The Cypriot Finance Ministry said that the signing of the agreement signals another step in the progress made by Cyprus in tax transparency and the exchange of information, stating, “It is obvious that the conclusion of the Agreement under reference will upgrade Cyprus as a business center, will further boost investment between the two countries, strengthening their trade to the benefit of both economies.”

On December 2, Iceland's Ministry of Finance also announced its signing of a Model 1 I.G.A. with the U.S. Iceland has been treated as having an I.G.A. in effect since November 30.

## **2014 APPLICATION SEASON FOR QUALIFIED INTERMEDIARY STATUS ENDED DECEMBER 5**

Financial institutions that did not apply for a qualified intermediary status on or before December 5 will not be able to obtain such status for 2014. Applications received before the end of the year but after December 5 will only be effective for the 2015 calendar year.

## **EXTENSION OF TIME TO SIGN I.G.A.'S FOR JURISDICTIONS THAT HAVE AN AGREEMENT IN SUBSTANCE TO IMPLEMENT F.A.T.C.A.**

More than 50 jurisdictions have reached an agreement in substance with the U.S. with respect to F.A.T.C.A. Those jurisdictions are treated as having an I.G.A. in effect and their F.F.I.'s are allowed to register as Reporting Model 1 or 2 I.G.A. F.F.I.'s until December 31, 2014. However, under an I.R.S. announcement published December 1, jurisdictions that can demonstrate they are making “firm resolve to sign the agreement” may get more time to get the I.G.A. signed beyond December 31. No elaboration was made as to what the Treasury would consider “firm resolve.”

A Treasury Department spokeswoman said the government will conduct a monthly review of those jurisdictions’ status to determine whether any countries should be taken off the list of those treated as having an I.G.A. in effect.

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## CURRENT I.G.A. PARTNER COUNTRIES

To date, the U.S. has signed more than 40 Model 1 I.G.A.'s and more than 40 other countries have reached such agreement in substance. Another six countries have signed a Model 2 I.G.A. and a handful of other countries also committed to this agreement. An I.G.A. has become a global standard in government efforts to curb tax evasion and avoidance on offshore activities and encouraging transparency.

At this time, the countries that are Model 1 partners by execution of an agreement or concluding an agreement in principle are:

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



The countries that are Model 2 partners by execution of an agreement or concluding an agreement in principle are: Armenia, Austria, Bermuda, Chile, Hong Kong, Iraq, Japan, Macao, Moldova, Nicaragua, Paraguay, San Marino, Switzerland, and Taiwan.

This list is expected to continue to grow.