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

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IN-SUBSTANCE I.G.A. JURISDICTION STATUS EXTENDED & AFFECTED F.F.I.'S MUST OBTAIN G.I.I.N.'S

Foreign financial institutions ("F.F.I.'s") that are based in jurisdictions that have (or are treated as having) entered into a Model 1 Intergovernmental Agreement ("I.G.A.") with the U.S. must register and obtain a Global Intermediary Identification Number ("G.I.I.N.") as part of the process to properly certify its status as an F.F.I. that complies with F.A.T.C.A. Withholding for residents of Model 1 jurisdictions who do not comply with F.A.T.C.A. started on January 1, 2015.

Jurisdictions which are treated as having entered into a Model 1 I.G.A. include countries which have not yet signed, but have reached an agreement in principle to sign, a Model 1 I.G.A. Those countries are referred to as having an "in-substance I.G.A." with the U.S. In early 2014, the I.R.S. announced that such in-substance I.G.A.'s can be treated as in effect and relied upon through the end of 2014. The I.R.S. F.A.T.C.A. webpage has a list of these in-substance I.G.A.'s. Announcement 2014-38 provides that a jurisdiction that is treated as if it has an I.G.A. in effect (*i.e.*, an in-substance I.G.A. country) but that has not yet signed an I.G.A. retains such status beyond December 31, 2014, provided that the jurisdiction continues to demonstrate firm resolve to sign the I.G.A. that was agreed in substance.

Announcement 2014-38 does not change the F.A.T.C.A. requirements relating to payments made on or after January 1, 2015. Therefore, F.F.I.'s subject to an in-substance I.G.A. will still need to meet the registration requirements and all due diligence and reporting requirements under F.A.T.C.A. to avoid withholding on payments received starting January 1, 2015.

F.A.T.C.A. INTERNATIONAL DATA EXCHANGE SERVICE WEB PAGES

The I.R.S. has added an additional web page to the F.A.T.C.A. International Data Exchange Service ("I.D.E.S."). The I.D.E.S. system allows for the U.S. to securely exchange data with foreign tax authorities and F.F.I.'s. The I.D.E.S. enrollment process may be different based on the relevant I.G.A., but will generally entail the following steps:

1. Create a sender payload;

2. Encrypt an A.E.S. key;

3. Create a metadata file; and

4. Create a transmission archive.

FOREIGN TRUSTS AND FAMILY HOLDING COMPANIES UNDER F.A.T.C.A.

F.A.T.C.A. divides the world of non-U.S. investors into two categories: foreign financial institutions ("F.F.I.'s") and non-financial foreign entities ("N.F.F.E.'s"). It is crucial for any foreign person to correctly determine its F.A.T.C.A. status as an F.F.I. or a N.F.F.E.

A foreign trust or family holding company which derives its income from investments in financial assets may be treated as an F.F.I. if (i) the trust or company is "managed" by a professional entity and not an individual and (ii) that manager has investment discretion concerning what the trust or company invests in. By contrast, if the trust retains an investment manager who is a sophisticated individual not employed by an entity, whether a family member or not, then the trust could be classified as a passive N.F.F.E.

If the trust or family corporation is treated as an F.F.I., then that F.F.I. will have to register on the F.A.T.C.A. electronic portal to become a Participating F.F.I. ("P.F.F.I.") or a Reporting Model 1 I.G.A. to avoid F.A.T.C.A. withholding. Among the many tasks imposed on a trust or family company that is a P.F.F.I. or a Reporting F.F.I. is the requirement to search its records or obtain documentation to see if it has a U.S. grantor, U.S. beneficiaries, U.S. shareholders, or U.S. controlled foreign entities. The P.F.F.I. or Reporting F.F.I. must then disclose the U.S. person's identity and certain related information to the I.R.S.

A passive N.F.F.E. is required to disclose to any withholding agent the identity of any U.S. person that has a 10% or greater interest in the entity. If an I.G.A. is applicable, the 10% threshold is removed and control is required. U.S. withholding agents are required to report to the I.R.S. the identity of such U.S. persons. Alternatively, a passive N.F.F.E. can register with the I.R.S. to become a Direct Reporting N.F.F.E. This will allow greater confidentiality for the N.F.F.E. since the trust then only tells the I.R.S. (but not all U.S. withholding agents) the identity of any 10% or greater owner or any controlling U.S. owners under an I.G.A.

CHILE ADOPTS LEGISLATION ALLOWING EXCHANGE OF FINANCIAL INFORMATION BUT U.S. NOT A BENEFICIARY

2014 was the year of the Inter-Governmental Agreement ("I.G.A."). Dozens of I.G.A.'s were signed or agreed to, including a Model 2 I.G.A. with Chile. However, tax treaties and tax information exchange agreements were shunted to the side with U.S. Treasury personnel scrambling to keep up with the I.G.A. demand. To make matters worse, the U.S. Senate has been delaying ratification of some tax treaties for many years.

In a reflection of the new global mood to share information, Chile started 2015 with the adoption of a measure that allows its tax authority to exchange financial information with certain foreign countries to reduce tax avoidance. While this new measure will allow Chile to exchange tax Information with countries that have in effect a tax treaty with Chile, the U.S. Senate has failed to ratify the U.S. tax treaty with Chile that was submitted to it in 2010. As a result, the U.S. does not benefit from this new Chilean measure that would have an even more far-reaching effect than the I.G.A. Hopefully, 2015 will be the year in which the U.S. Senate acts to approve the treaty with Chile so the U.S. can benefit from this new Chilean action.

REVISIONS TO FORM 8938

One of the tax enforcement tools adopted in F.A.T.C.A. was the creation of a new reporting form, Form 8938, Statement of Specified Financial Accounts. The form was initially published back in November 2012 with four parts, but nothing remains static in life—especially the tax law. The I.R.S. made major revisions to the form in December 2013 that expanded the form to six parts. The I.R.S. recently revised it again in December 2014, but this time there is no major overhaul. The I.R.S. has not yet even published the instructions for the new form; the only still-relevant instructions available are for the December 2013 form.

The updated form still has six parts:

- Part I is a Foreign Deposit and Custodial Accounts Summary.
- Part II is an Other Foreign Assets Summary.
- Part III is a Summary of Tax Items Attributable to Specified Foreign Financial Assets.
- Part IV is a description of Excepted Specified Foreign Financial Assets.
- Part V is a Detailed Information for Each Foreign Deposit and Custodial Account Included in the Part I Summary.
- Part VI is a Detailed Information for Each “Other Foreign Asset” Included in the Part II Summary.

The new form still does not override the need to file an F.B.A.R. In fact, there are different filing deadlines and the information reported does not all match-up between the Form 8938 and the F.B.A.R. The one consistent item that remains important is that care is needed whenever a U.S. person owns any assets outside the U.S. in order to avoid potential penalties that can be very high.

BANK OF ISRAEL EXTENDS TAX REPORTING REQUIREMENTS TO ALL FOREIGN RESIDENTS

On December 22, the Bank of Israel released a draft directive intended to standardize measures that Israeli banks must adopt as part of the country’s efforts to combat unreported capital. The directive will expand measures already adopted for U.S. customers under F.A.T.C.A. to all foreign residents. The extended measures are a

response to U.S. investigations of three major Israeli banks on suspicion of helping their customers evade U.S. taxes.

The draft directive will require Israeli banks to collect a declaration from all foreign resident account holders, both new and existing, that indicates they have paid all taxes required on those accounts in other countries. The foreign residents will also have to provide supporting documentation on the funds' source and waive confidentiality rules so that the Israeli banks can both investigate their claims and pass their account information on to relevant tax authorities abroad.

Currently, the U.S., U.K., Germany, France and the Organization for Economic Co-operation and Development have all adopted new standards to locate and tax unreported funds.

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BANK LEUMI TO PAY $400 MILLION TO RESOLVE U.S., N.Y. TAX PROBES

The Justice Department brought conspiracy charges against Bank Leumi and four of its subsidiaries. On December 22, the bank announced that it agreed to pay $270 million to the U.S. government and admit it unlawfully helped clients hide assets from the I.R.S. No criminal conviction and no limitation on the bank's activities in the U.S. will be imposed. The company will also pay $130 million to New York's Department of Financial Services, terminate several employees including the head of Bank Leumi Trust, and hire an outside monitor. This is another continuation on the global crackdown by the U.S. to prevent the evasion of U.S. taxes on assets held abroad.

As part of a settlement with the Department of Justice, Bank Leumi and the Leumi Group are obligated to continue implementing a stringent compliance policy in order to confirm that the group is acting in accordance with F.A.T.C.A. The bank's announcement mentions that the fine to be paid to the U.S. government has been significantly reduced as a result of Leumi Group's cooperation with U.S. authorities throughout the investigation.

VATICAN BANK TO SIGN I.G.A.

Effective November 30, the Holy See, that is, the Vatican Bank, reached agreement to sign a Model 1 I.G.A. and is treated as having an in-substance I.G.A. in effect. American clergy may hold accounts with the bank and be subject to disclosure. Forbes magazine reported on December 29 that "the timing is serendipitous. Pope Francis has suggested that the Vatican Bank could use a makeover."

SOME HONG KONG BANKS REACTION TO F.A.T.C.A. – U.S. CUSTOMERS GO ELSEWHERE

On December 18, Chinese news media reported that rather than comply with F.A.T.C.A., some banks in Hong Kong are closing existing accounts and refusing to open new ones for U.S taxpayers. According to the news reports, the benefits from some U.S. clients' bank accounts do not outweigh the costs associated with

locating, monitoring, and reporting on the accounts, or the penalties the banks may face for noncompliance. Other banks, however, see F.A.T.C.A. compliance as a way to gain a market share.

On November 13, Hong Kong and the U.S. signed a Model 2 I.G.A. The I.G.A. requires F.F.I.'s to report U.S. taxpayers' relevant account information directly to the I.R.S. (as opposed to their own governments, as done under a Model 1 I.G.A.). Under the I.G.A., Hong Kong financial institutions need to register with the I.R.S. and perform due diligence to prove their customers are not U.S. persons. Barring U.S. customers does not eliminate this registration and due diligence burden, but it does eliminate the need to report (assuming no customers who are U.S. persons or U.S. controlled foreign entities exist).

Hong Kong banks that turned their backs on U.S. customers today to minimize their administrative obligations may soon be faced with the decision of what to do for residents of other foreign countries that are joining the trend of global cross-border tax sharing. Such countries include the U.K. and members of the E.U. Will they add other countries to the list of *persona non grata*? Some banks' decision to turn away U.S. customers will open business opportunities for other banks which are taking a long term view: in a few years, tax sharing will be the global norm, and assessing that the necessary reporting may not be that burdensome in the long run.

CURAÇAO SIGNS RECIPROCAL MODEL 1 I.G.A.

Although the Kingdom of the Netherlands and the U.S. signed an I.G.A. in December 2013, the agreement was not applicable to Aruba, Curaçao and Saint Marten. On December 16, 2014, a Model 1 I.G.A. was signed between Curaçao and the U.S., however, an I.G.A. was treated as "in effect" by the U.S. Treasury as of April 30, 2014, when the Curaçaoan government and the U.S. reached an agreement in substance.

QATAR SIGNS MODEL 1 I.G.A.

Even though Qatar and the U.S. did not sign an I.G.A. until January 7, 2015, a Model 1 I.G.A. between Qatar and the U.S. has been treated as "in effect" by the U.S. Treasury as of April 2, 2014.

CURRENT I.G.A. PARTNER COUNTRIES

To date, the U.S. has signed more than 50 Model 1 I.G.A.'s and more than 50 other countries have reached such agreement in substance. An I.G.A has become a global standard in government efforts to curb tax evasion and avoidance on offshore activities and to encourage transparency.

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

"To date, the U.S. has signed more than 50 Model 1 I.G.A.'s and more than 50 other countries have reached such agreement in substance."

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

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.