

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

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Tags

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I.G.A.

POTENTIAL DISAGREEMENT BETWEEN THE U.S. AND I.G.A. JURISDICTIONS ON HOW TO TREAT NEW INDIVIDUAL ACCOUNTS

Based on the answer to Question 10 under the “General Compliance” heading of the I.R.S.’s F.A.T.C.A. Frequently Asked Questions And Answers webpage, the I.R.S. requires that financial institutions in I.G.A. countries refuse to open new individual accounts if they cannot obtain a Form W-8BEN or a self-certification from the account holder. Conversely, the governments of both the U.K. and Canada have taken the position that under their I.G.A.’s, resident F.F.I.’s can open new individual accounts without self-certifications as long as the accounts are treated as reportable accounts.

In a letter to the Treasury Department released on March 27, the Securities Industry and Financial Markets Association (“S.I.F.M.A.”) pointed to this potential disagreement as having inconsistent guidance coming out of the U.S. and other I.G.A. countries. Such inconsistency may hurt American banks with foreign operations. These banks will be placed at a disadvantage if they follow U.S. authority while their competition is allowed to follow less restrictive rules. S.I.F.M.A. does not take a position as to who is right in the disagreement, but expressed their concern about this dispute and the lack of any information on this and similar disputes over the meaning of important I.G.A. terms that will need to be resolved in the future.

I.R.S. TO PUBLISH TECHNICAL EXAMPLE DEMONSTRATING EXCHANGE OF INFORMATION

F.A.T.C.A. reports are to be submitted to the International Data Exchange Service (“I.D.E.S.”), which is a secure managed file transfer system that only accepts encrypted transmissions. The I.R.S. announced on March 2 that the I.D.E.S. gateway had been opened for countries and financial institutions to begin transmitting data.

The I.R.S. posted on a service called GitHub a new example showing F.F.I.’s how to create “data packets” of taxpayer account information to transmit using the I.D.E.S. The example also shows how to decrypt a notification.

GitHub is an open source repository hosting service that allows users to collaborate and share code and content. The I.R.S. has made it clear that they do not endorse any commercial product.

I.R.S. HAS ADDED NEW F.A.Q.'S CONCERNING F.A.T.C.A. REPORTING

The I.R.S.'s new F.A.Q.'s clarify certain aspects of the requirement and deadline for filing Form 8966 ("F.A.T.C.A. Report") for certain filers.

The new F.A.Q. 1 provides that a direct reporting N.F.F.E. and a sponsoring entity of a direct reporting N.F.F.E. is required to submit Form 8966 to declare that it has no direct or indirect substantial U.S. owners for the calendar year.

F.A.Q. 2 addresses the question of when Form 8966 is due with respect to calendar year 2014 for participating F.F.I.'s and reporting Model 2 F.F.I.'s.

For participating F.F.I.'s, Form 8966 is due on or before March 31 of the year following the end of the calendar year to which the form relates. With respect to calendar year 2014 only, the instructions to Form 8966 provide for an automatic 90-day extension of time to file Form 8966 without the need to file any form or take any action. The automatic 90-day extension is not available to reporting Model 2 F.F.I.'s reporting on a non-consenting U.S. account.

Thus, filers that benefit from this automatic extension have until June 29, 2015 to submit Forms 8966 or request another 90 day extension to file.

Reporting Model 2 F.F.I.'s reporting on a non-consenting U.S. account should refer to the applicable Model 2 I.G.A. for the due dates of the Forms 8966.

The I.R.S. recognizes that F.F.I.'s will be using the I.D.E.S. system for the first time. Therefore, with respect to calendar year 2014, reporting Model 2 F.F.I.'s filing Form 8966 with respect to non-consenting U.S. accounts will not be treated as being in significant non-compliance under their applicable Model 2 I.G.A.'s, as long as (i) such F.F.I.'s make good faith efforts to comply with their reporting obligations and (ii) reporting is completed within 90 days after the applicable filing deadline (taking into account any other extensions already provided).

SOUTH AFRICA PUBLISHES DRAFT GUIDANCE ON THE IMPLEMENTATION OF THE I.G.A.

A Model 1 I.G.A. was signed by South Africa on June 9, 2014, and entered into force on October 28, 2014. Under the terms of the agreement, starting July 1, 2014, South African F.F.I.'s are required to submit information to the South African Revenue Authority ("S.A.R.S.") for 2014 by June 30, 2015. This data will then be sent to the I.R.S. by S.A.R.S. by September 30, 2015. Thereafter, the required information must be reported to S.A.R.S. annually by May 31, and S.A.R.S. will annually exchange the information with the I.R.S. by September 30.

S.A.R.S. has published a draft general guide on the implementation of the I.G.A. to provide further assistance to South African F.F.I.'s. The I.G.A. is an important stepping stone for South Africa in preparation for the automatic exchange of information in accordance with the O.E.C.D. common reporting standard, to which South Africa is one of the early adopters that committed to commence the standard in 2017.



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MAURITIUS TO ISSUE F.A.T.C.A. GUIDANCE

Mauritius and the U.S. signed a Model 1 I.G.A. to implement F.A.T.C.A. on July 5, 2014. The I.G.A. entered into force on August 29, 2014. The guidance, issued by Mauritius on March 20, provides practical assistance to F.F.I.’s, businesses, and their advisors and officials on the application of F.A.T.C.A. in order to ensure that reporting requirements are met and withholding is avoided.

SINGAPORE I.G.A. ENTERS INTO FORCE

Singapore and the U.S. signed a Model 1 I.G.A. on December 9, 2014. Following this, Singapore issued regulations and released a revised e-tax guide on meeting F.A.T.C.A. requirements. The public was invited to respond, and on March 17 the Inland Revenue Authority of Singapore (“I.R.A.S.”) published their responses to the public feedback. I.R.A.S. said it had accepted 208 out of 597 suggestions. The suggestions accepted were those that will help advance the policy objective for implementing the I.G.A., and they have been incorporated into the enacted legislation and the e-tax guide.

CROATIA AND BELARUS SIGN A MODEL 1 I.G.A.

Croatia and the U.S. have signed a Model 1 I.G.A. to implement F.A.T.C.A. and enhance transparency between the two countries. Under the agreement, signed March 20, Croatian F.F.I.’s will be required to submit data on U.S. clients annually to the Croatian tax administrations and the information will be exchanged with the I.R.S. As this is a reciprocal agreement, the I.R.S. will inform Croatia about Croatian residents who are account holders in the U.S.

Belarus has signed a Model 1 I.G.A. on March 18. Last May, the President of Belarus signed a decree approving a draft version of the I.G.A., which gave Belarus the status of having an I.G.A. in effect as of June 6, 2014.

CURRENT I.G.A. PARTNER COUNTRIES

To date, the U.S. has signed, or reached an agreement to sign, more than 100 Model 1 I.G.A.’s. An I.G.A. has become a global standard in government efforts to curb tax evasion and avoidance on offshore activities and encourage 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
Curaçao	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 will continue to grow.