

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

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### Tags

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### I.R.S. OFFERS GUIDANCE TO TAXPAYERS SEEKING ELECTRONIC NOTIFICATION ON F.A.T.C.A. REPORTS

The Internal Revenue Service (“I.R.S.”) provided guidance to taxpayers who do not receive notification of the status of their reports once they have uploaded the data into the electronic system used to transmit information regarding overseas bank accounts to the I.R.S. under the Foreign Account Tax Compliance Act (“F.A.T.C.A.”). There has been growing concern among taxpayers as to what to do if they successfully upload a F.A.T.C.A. report into the International Data Exchange Service (“I.D.E.S.”) but do not get an International Compliance Management Model (“I.C.M.M.”) notification letting them know the status of the report.

The I.R.S. added a new Item D9 to its F.A.T.C.A. I.D.E.S. Frequently Asked Questions and Answers relating to data transmission. The I.R.S. has also stated that a similar question and answer was added to the F.A.Q.’s on the I.C.M.M., the I.R.S. system that ingests, validates, stores, and manages F.A.T.C.A. information once it is received.

### U.K. UPDATES F.A.T.C.A. REPORTING REQUIREMENTS FOR ‘NIL’ RETURNS

U.K. Financial Institutions (“F.I.’s”) are required to register and report information on their U.S. account holders to Her Majesty’s Revenue and Customs (“H.M.R.C.”) for the 2014 period by May 31. However, the U.K. tax authority has made changes to the reporting criteria under its U.S. F.A.T.C.A. I.G.A., affecting the reporting requirements of certain entities. The revisions exempt certain F.I.’s from submitting returns if they have nothing to report and also exempt holding companies and treasury center companies from the definition of an F.I., eliminating their reporting requirements altogether.

The I.R.S. confirmed on its F.A.T.C.A. Frequently Asked Questions and Answers webpage that “*nil* reports” are not necessary from certain entities. However, H.M.R.C. said that where a U.K. F.I. is in a *nil* return position because it applied the *de minimis* \$50,000 or \$250,000 threshold on pre-existing accounts, H.M.R.C. will still require the F.I. to submit the *nil* return in order to make the election.

## FOREIGN BANKS & FINANCIAL INSTITUTIONS MUST HAVE INDIVIDUAL SELF-CERTIFICATION BEFORE OPENING ACCOUNTS

F.I.'s in jurisdictions that have Model 1 Intergovernmental Agreements ("I.G.A.'s") with the U.S. must get potential account holders to self-certify residency and citizenship information before opening a new account. Obtaining a self-certification before opening an account is a key due diligence requirement in a Model 1 I.G.A. jurisdiction for individual accounts. This point was clarified in the recently added Question 10 of the General Compliance section on the I.R.S.'s F.A.T.C.A. Frequently Asked Questions and Answers webpage and was the reason for a potential disagreement reported in last month's "F.A.T.C.A. 24/7."

*"Obtaining a self-certification before opening an account is a key due diligence requirement in a Model 1 I.G.A. jurisdiction for individual accounts."*

Despite this clarification on the I.R.S.'s website, some jurisdictions (such as Canada and the U.K.) allow in their F.A.T.C.A. guidance for F.I.'s to open new individual accounts without first obtaining a self-certification, provided that if a self-certification form is not obtained prior to the reporting deadline such accounts are treated as reportable accounts. At an A.B.A., I.F.A., and I.B.A. joint program in Munich, an I.R.S. official recently stated that this is not the intent of F.A.T.C.A. and goes against the basic principles of the legislation. This difference of view between the I.R.S. and other countries leaves F.I.'s operating in those countries in a quandary as to whether to adhere to local guidance or that of the I.R.S. Following the I.R.S. may be the most conservative course of conduct, but it may also leave those institutions out of step with their local competitors.

## FINANCIAL INSTITUTIONS DEEMED COMPLIANT IN JURISDICTIONS WORKING TO IMPLEMENT I.G.A.'S

The I.R.S. said in December 2014 that jurisdictions with Model 1 I.G.A.'s currently treated as "in effect" can keep that status after December 31, 2014, if they can show they are actively working toward signing an agreement. As of April 2015, the U.S. has signed 58 I.G.A.'s and an additional 55 countries have reached an agreement in substance to sign an I.G.A., with most of those being Model 1 I.G.A.'s.

During a recent conference on tax planning and strategies in the U.S. and Europe, an I.R.S. official said that for jurisdictions that have signed but not yet implemented Model 1 I.G.A.'s, F.I.'s can be treated as compliant as long as those jurisdictions are taking steps to implement F.A.T.C.A. and the I.G.A. and the Treasury is notified of any delays.

These jurisdictions, and those that have not yet signed an I.G.A., will not have a mechanism to exchange F.A.T.C.A. information with the U.S. for 2014. Nevertheless, because F.I.'s resident in such jurisdictions will be treated as compliant, they must still follow the necessary due diligence procedures provided for in Annex 1 of

the Model 1 I.G.A. Such due diligence requires the collection of self-certifications, which may be problematic prior to local implementation of F.A.T.C.A., and the I.R.S. has provided some leeway to F.I.'s in the form of additional time. However, if a self-certification is not collected within one year of the date the I.G.A. enters into force, such accounts must be closed. The F.I. will be required to perform pre-existing account due diligence on each closed account and report any with U.S. *indicia*. Reporting for such F.I.'s will be delayed until information exchange between the U.S. and the jurisdiction is implemented.

## BRITISH VIRGIN ISLANDS OPENS PORTAL FOR F.A.T.C.A. REGISTRATION

On April 22, the British Virgin Islands ("B.V.I.") opened its Financial Account Reporting System ("B.V.I.F.A.R.S.") to enable financial institutions to register and submit information on their U.S. clients in accordance with the B.V.I.'s agreement with the U.S. on F.A.T.C.A. (the "U.S.-B.V.I. I.G.A.")

B.V.I.-resident F.I.'s that are required to report must register on the B.V.I.F.A.R.S. in order to submit information to the government under the U.S.-B.V.I. I.G.A. Registration is required by June 1, and reporting is required by June 30 with respect to information regarding the 2014 tax year. The B.V.I. government will then transmit the submitted information to the I.R.S. by September 30.

The B.V.I. government highlighted that F.I.'s with nothing to report are not obligated to file a *nil* report, following a recent I.R.S. update. Therefore, if there is nothing to report, there is no mandatory requirement to enroll with B.V.I.F.A.R.S. Although, if the F.I. chooses to submit a *nil* report, it will have to enroll.

## 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 the 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 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.

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	

This list will continue to grow.