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TREASURY OFFERS MORE FAVORABLE PROCEDURES FOR NEW ACCOUNT REPORTING

The Treasury Department has notified 40 countries with early versions of an I.G.A. that more favorable terms under Article 4 or Annex I of the I.G.A. have been afforded to another Partner Jurisdiction. As a result, F.F.I.'s in those countries can use the more favorable procedures for due diligence and reporting. The countries contacted include Canada, France, Germany, Switzerland, and the U.K., as well as most other European jurisdictions and countries in other parts of the world. The Treasury's letter was sent directly to each country and was also published online.[1]

The letter was sent to enable the I.R.S. to manage the process of updating early I.G.A.'s. Under Article 7 of all I.G.A.'s, the U.S. undertakes the obligation to notify its Partner Jurisdictions of any more favorable terms under Article 4 or Annex I of an I.G.A. afforded to another Partner Jurisdiction. Once notification is given, the revision of the existing I.G.A. is automatic unless a country specifically declines in writing the application of any of the terms in the letter. To confirm whether a particular jurisdiction has declined, affected parties must contact the I.R.S. in writing within 90 days of the date of the letter.

The more favorable terms are available to banks and other F.F.I.'s in countries that have I.G.A.'s that have already entered into force and to banks in countries that have agreed in substance to an I.G.A. For countries in the latter category, such terms provide a path to compliance.

The notification provides an example of a more favorable provision in a later I.G.A. In doing so, it unilaterally implements an I.R.S.-mandated solution to an intergovernmental dispute between the I.R.S. and tax authorities in the U.K. and Canada. The dispute relates to the whether self-certification is required at the time new accounts are opened as a condition for opening such accounts.

Earlier this year, it became known that U.K. and Canadian F.A.T.C.A. implementation rules applicable to banks in those countries permitted self-certification within a reasonable time after opening an account. If proper self-certification is not obtained, the account would be reported to the I.R.S. as recalcitrant. This position is not consistent with the advice in F.A.T.C.A. FAQ 10. There, the I.R.S. states that an F.F.I. must obtain a self-certification at the time of account opening. If the F.F.I. cannot obtain a self-certification at account opening, it cannot open the account. This position causes the self-certification rules applicable to domestic financial institutions to be extended to F.F.I.'s.

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[1] U.S. Department of Treasury, "Notification of More Favorable Terms (Certain Alternative Procedures)," Jul 27, 2015.

The Treasury letter adopts a "Solomonesque" solution based on Paragraph G of Section VI of Annex I of the British Virgin Islands I.G.A. In broad terms, the approach of the B.V.I. I.G.A. is to provide a grace period of 12 months from the entry into force of the B.V.I. I.G.A. During this period, B.V.I. banks must ask new account holders to self-certify their citizenship status and confirm the "reasonableness" of the certification. The 12-month period may be terminated at an earlier point once the B.V.I. government has the ability to compel reporting by B.V.I. banks.

If during this period the account is identified as having the status of a U.S. reportable account or as an account held by a non-participating financial institution, the B.V.I. government must report the account to the U.S. within a specified period after the account is identified. The reporting deadline is the later of either the next September 30 or 90 days from identification. If banks cannot identify new accounts within one year, they will be required to close the accounts. Once the grace period has run out, due diligence and self-certification is required at the time the account is opened.

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The forgoing procedure is extended to all countries that have been notified. Those countries – which include Canada and the U.K. – will be presumed to accept the rules applicable to self-certification unless a written declination letter is received by the I.R.S. The open question is whether the U.K. and Canada will act to decline the terms offered in the letter, and if they do so, whether they will be able to decline only the provisions relating to the self-certification of new accounts.

The scope of the letter is not limited to the self-certification procedures. Consequently, beyond the question of how Canada and the U.K. will react to the notification, more fundamental issues relating to the effective content of an I.G.A. remain unanswered. Which terms of an actual I.G.A. have been automatically replaced in an earlier I.G.A.? What is the extent of the revision? Will advance sheets showing unofficial changes be required?

COMMON REPORTING STANDARD HURDLES BECOME NOTICEABLE TO U.S. MULTINATIONALS

Ninety-four countries have agreed in principle to the O.E.C.D.'s common reporting standard ("C.R.S.") calling for each jurisdiction to share information on financial accounts with other countries. Sixty-one countries have already signed a multilateral competent authority agreement to participate, of which 40 are early adopters that will begin implementation stages as early as January 1, 2016. Actual reporting under the C.R.S. will begin in 2017. Philip Kerfts, head of the O.E.C.D.'s International Cooperation Unit within the Center for Tax Policy and Administration, said he expects more countries to sign the multilateral pact toward the end of 2015.

While the countries that agreed to the C.R.S. have not yet begun to negotiate the bilateral agreements that the C.R.S. requires, the O.E.C.D. approach initially allows countries to view other jurisdictions as participating or not participating based on whether they have committed to the C.R.S., rather than on whether they have negotiated an agreement. According to Kerfts, a country's government will need to make a public commitment in order to be treated as participating. Ultimately, committing without implementation will not be enough. Countries must settle bilateral

agreements by July 1, 2017 and begin exchanging information by 2018 in order to be considered participating.

As of now, the U.S. has not committed formally to participate in the C.R.S. If it does not, U.S. multinationals will face major challenges because participating tax agencies may report information to the I.R.S. that could be duplicative, incomplete, or incorrect. The biggest impact would be on the U.S. fund industry. If the U.S. is treated as non-participating, U.S. investment entities doing business in countries that have adopted the C.R.S. could face "look-through" treatment by jurisdictions, which means that information will be reported to the I.R.S. identifying controlling persons and possibly reporting income to those persons. This may cause duplicative or misleading reporting. This may be problematic for investment managers that are identified incorrectly as controlling persons.

While the Treasury believes that F.A.T.C.A. reporting should allow the U.S. to be viewed as participating, other governments may not agree.

In addition to the global problem stemming from participation/non-participation by the U.S., multinational companies that already comply with F.A.T.C.A. have avoided modifying information systems to gather information for compliance with the C.R.S. The information required under the C.R.S. and F.A.T.C.A. is similar, but not identical. For example, F.A.T.C.A. focuses on citizenship while the C.R.S. focuses on residence. Additionally, the C.R.S. does not have a uniform *de minimis* rule under which accounts worth not more than $50,000 are exempt. While this rule exists in connection with F.A.T.C.A. reporting, each country retains the flexibility to create its own threshold under C.R.S.

ICELAND AND UNITED ARAB EMIRATES PUBLISH F.A.T.C.A. GUIDANCE

The Icelandic Directorate of Internal Revenue issued guidance on July 10, 2015, regarding the I.G.A. signed on May 26. The guidance includes answers to frequently asked questions on the implementation of the I.G.A. and instructions on due diligence requirements.

The United Arab Emirates ("U.A.E.") Ministry of Finance issued guidance on July 15, 2015, regarding reporting obligations of U.A.E. F.F.I.'s under the I.G.A. Further, it published registration forms for U.A.E. F.F.I.'s to access the local F.A.T.C.A. portal.

BELARUS RATIFIES I.G.A. AND EXPLAINS F.A.T.C.A. REPORTING RULES

On July 22, 2015, to implement F.A.T.C.A., the Belarusian National Legal Internet Portal published a law ratifying the Model 1 I.G.A. between Belarus and the U.S., which had been signed on March 18.

Prior to such ratification, on July 15, the Belarusian Ministry of Taxes and Duties explained that under the I.G.A. Belarusian F.F.I.'s will not be required to obtain a digital

certificate designed for cryptographic protection, since the Ministry is responsible for transmitting the reportable information to the I.R.S. through the International Data Exchange Service ("I.D.E.S.") and so the Ministry will obtain such certificates.

ITALY PUBLISHES IMPLEMENTATION DECREE FOR EXCHANGE OF INFORMATION

On August 6, 2015, the Italian Revenue Agency ("I.R.A.") published an implementation decree allowing reporting institutions to submit information through a third-party supplier under certain conditions. Further to the decree, the I.R.A. also issued instructions for electronically transmitting information by financial institutions covered by the I.G.A. The deadline to submit 2014 tax information is August 31, 2015.

SLOVAKIA SIGNS MODEL 1 I.G.A.

Slovakia's Ministry of Finance announced on July 31, 2015, that it has signed a Model 1 I.G.A. with the U.S. The agreement signed is reciprocal. Following the signing, the agreement was submitted to the Slovak National Council for approval and ratification.

TURKEY SIGNS MODEL 1 I.G.A.

The Turkish government announced on July 30, 2015, that it has signed a Model 1 I.G.A. with the U.S. The agreement will enter into force on the date of Turkey's written notification to the U.S. confirming that it has completed its necessary internal procedures to enact the agreement.

MAURITIUS AND LUXEMBOURG EXTEND LOCAL F.A.T.C.A. REPORTING DEADLINES

The Mauritian Revenue Authority and the Luxembourg Inland Revenues announced on July 23 and 24, 2015, respectively, that the deadline for transmitting information under F.A.T.C.A has been extended to August 31, 2015.

CURRENT I.G.A. PARTNER COUNTRIES

To date, the U.S. has signed, or reached an agreement to sign, more than 100 Model 1 and Model 2 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 1 partners by execution of an agreement or concluding an agreement in principle are:

- 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 will continue to grow.