

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

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Tags

F.A.T.C.A.
I.D.E.S.
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VENDOR ACCESS TO F.A.T.C.A.-RELATED DATABASE IS PERMISSIBLE

In e-mailed advice dated September 4, 2015, the I.R.S. advised an I.R.S. employee that allowing a vendor access to the I.R.S.'s F.F.I. database for a demonstration of technical services to assist in the administration of F.A.T.C.A. would be permissible under Code §6103(k)(6).

Section 6103(k)(6) authorizes I.R.S. employees to disclose return information "in connection with [their] official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws" to the extent the disclosure is necessary in obtaining information that is not otherwise reasonably available, or "with respect to the enforcement of any other provision of [Title 26]." In this case, the disclosures would be made in order to determine whether or not the I.R.S. would enter into a contract with the vendor for the performance of technical services to identify non-compliance with F.A.T.C.A.

F.A.Q.'S CLARIFY BRANCH AND DISREGARDED ENTITY REGISTRATION REQUIREMENTS AND UPDATE I.D.E.S. RULES

The I.R.S. has recently updated its list of frequently asked questions ("F.A.Q.'s") to clarify branch and disregarded entity ("D.R.E.") registration requirements under the Foreign Account Tax Compliance Act ("F.A.T.C.A."). Subject to specific exceptions, a branch – including disregarded entities located in jurisdictions that either do not have an Intergovernmental Agreement ("I.G.A.") or have a Model 2 I.G.A. – must register as a branch of its owner, rather than as a separate entity. The I.R.S. added Q5 to instruct branches that inadvertently registered as separate entities on how to correct their registrations.

The I.R.S. clarifies that a branch in a Model 1 I.G.A. jurisdiction (but not a D.R.E. treated as a separate entity for purposes of its reporting to the applicable Model 1 jurisdiction) must generally be registered as a branch of its owner and not as a separate entity. Furthermore, the I.R.S. states that the Financial Institution ("F.I.") of which the branch is a part must revise its registration to include the branch by the end of 2015. An F.I. registering for the first time must register its branches (including an appropriate lead F.I. or sponsoring entity) when completing Part 1 of F.A.T.C.A. registration.

Leniency for Withholding Agents

The I.R.S. has offered leniency to withholding agents who know, or have reason to know, that an incorrectly registered branch has provided a Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*.

These agents can rely on the form (if otherwise valid) for payments made by the end of the 2015 calendar year.

Amending I.D.E.S. Reports

The I.R.S. also updated its F.A.T.C.A. I.D.E.S. Technical F.A.Q.'s. The I.D.E.S. is the International Data Exchange Services that allows the I.R.S. to exchange taxpayer information with foreign tax authorities.

The main change was the addition of two new questions on using F.A.T.C.A. XML Schema to void a record reported in error or to amend a F.A.T.C.A. Report.¹ The I.R.S. also updated Data Transmission, Question D12, "Can we get individual confirmation that our files were received and approved by the IRS?"

F.A.T.C.A. COMPLIANCE IS UNDERWAY IN BRAZIL

On September 1, Brazilian banks began providing information to the Brazilian tax authorities on the monthly financial operations of U.S. companies and individuals with bank deposits of \$50,000 or more as part of its I.G.A. to facilitate reporting under F.A.T.C.A. Brazil signed a Model 1 I.G.A. with the U.S. on September 23, 2014.

The first report, according to a Model 1 I.G.A., will be sent to the U.S. authorities on September 30, 2015 and will cover the year 2014. Information will be collected by financial institutions on a monthly basis, and reports regarding the preceding six months will be sent to tax authorities on the last working days of February and August of each year.

THE PHILIPPINES AND CROATIA POSTPONE F.A.T.C.A. INFORMATION REPORTING

The Model 1 I.G.A. between the Philippines and the U.S. was signed on July 13, 2015, but an agreement in substance was reached on November 30, 2014. Nevertheless, the Philippine Bureau of Internal Revenue has recently announced that reporting will not take place on September 30, 2015, as required under the I.G.A. As a result, financial institutions resident in the Philippines will not be required to submit information under the I.G.A. until the second quarter of 2016.

"The Philippine Bureau of Internal Revenue has recently announced that reporting will not take place on September 30, 2015, as required under the I.G.A."

¹ See Data Format and Structure, Question C22, "How do I void a record reported in error using FATCA XML Schema?" and Question C23, "How do I amend a FATCA Report using FATCA XML Schema?"

“Sen. Rand Paul (R-KY) joined the plaintiffs of a suit...arguing that F.A.T.C.A. is unconstitutional.”

However, reporting F.F.I.’s must take the necessary steps to prepare for full implementation of the terms of the I.G.A. and the concomitant submission of information on reportable accounts beginning the second quarter of 2016. Reporting F.F.I.’s are also reminded that the first batch of reports to be submitted shall include information relating to 2014 and 2015 reportable accounts, as detailed in the I.G.A.

The Model 1 I.G.A. between Croatia and the U.S. was signed on March 20, 2015. On September 10, 2015, the Croatian Ministry of Finance announced that the exchange of information under the I.G.A. that was to take place on September 30, 2015 will also be postponed until a date next year, but will in no event be later than September 30, 2016.

F.A.T.C.A. UNDER ATTACK: INJUNCTIVE RELIEF SOUGHT TO CURTAIL F.A.T.C.A.

On July 14, 2015, Sen. Rand Paul (R-KY) joined the plaintiffs of a suit, filed by Republicans Overseas Action, Inc. and others, arguing that F.A.T.C.A. is unconstitutional. The lawsuit maintains that the Obama administration violated the rights of Mr. Paul, a candidate for the Republican presidential nomination, and 99 other senators to advise and consent on agreements with foreign countries.

Specifically, the lawsuit argues that the I.G.A.’s settled between the Treasury Department and foreign governments violate the Constitution’s Article II, Section 2, which requires two-thirds of U.S. senators to be present and voting in order to approve a foreign treaty. The suit also claims the law has inflicted unprecedented hardships on American expatriates, who are prevented from receiving banking services overseas, and has caused many to renounce U.S. citizenship in order to avoid onerous financial penalties and invasions of privacy.

On September 4, attorneys for the Justice Department faced off against attorneys representing the plaintiffs at a hearing in the U.S. District Court for the Southern District of Ohio. on whether F.A.T.C.A. is unconstitutionally burdening U.S. citizens overseas (*Crawford v. Dep’t of Treasury*). The attorneys clashed over whether F.A.T.C.A., its agreements, and other requirements to report U.S.-owned accounts and assets held abroad are allowable under the Constitution, as well as other potential injury issues.

The hearing was regarding a motion for injunctive relief filed in July, along with a lawsuit seeking to get the statute overturned. The Justice Department is expected to file a motion to dismiss in the next week or two.

In order to succeed, the taxpayers must prove direct harm; an indirect chain of causation is not enough. The plaintiffs also contend that the withholding is a draconian penalty that is unconstitutional, although in reality, this is merely a tax. Additionally, it will be quite a challenge for the plaintiffs to show that the I.G.A.’s are not within the president’s authority, since the administration has negotiated tax exchange information agreements with a number of jurisdictions without the need for Senate action.

At the hearing, Judge Thomas M. Rose gave little indication about whether or not he will grant the injunction sought by the plaintiffs seeking to bar the enforcement of F.A.T.C.A.

PORTUGAL ELIGIBLE FOR MORE FAVORABLE REPORTING PROCEDURES

The Treasury Department has added Portugal to its list of countries with early versions of agreements under F.A.T.C.A. that may use the more favorable procedures for reporting new accounts available in later pacts.

In late July, the Treasury announced that it would notify 40 countries of the positive option and released a letter regarding the newly available terms. The addition of Portugal on August 18 expands the list of countries eligible for this benefit by one jurisdiction, bringing the total number to 41.

The move not only offers conformity between I.G.A.'s, but eases the reporting requirements for banks in many nations. For a detailed discussion of the Treasury letter please refer to our article in last month's edition of Insights.²

MAURITIUS REVENUE AUTHORITY ISSUES F.A.T.C.A. F.A.Q.'S

The Mauritius Revenue Authority has issued frequently asked questions and answers about F.A.T.C.A. and the U.S.-Mauritius I.G.A. The F.A.Q.'s address registration, information reporting procedures, financial institutions and nonfinancial foreign entities, and technical issues.

THE FEDERATION OF ST. KITTS AND NEVIS SIGNS A MODEL 1 I.G.A.

On August 31, 2015, the text of the St. Kitts and Nevis I.G.A. was published. This I.G.A. is a Model 1 non-reciprocal I.G.A. Pursuant to this agreement, the government of St. Kitts and Nevis will compile information from local F.I.'s as to relevant accounts to be reported and submit this data to the I.R.S.

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.

² *Insights*, Vol. 2 No. 8, "F.A.T.C.A. 24/7."



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.