

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

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Tags

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UPGRADES TO REGISTRATION SYSTEM ALLOW FOR REGISTRATION OF SPONSORED ENTITIES

On November 16, the I.R.S. updated its Foreign Account Tax Compliance Act (“F.A.T.C.A.”) Online Registration System. One of the important features of the upgrade is that the I.R.S. now enables sponsoring entities to register their sponsored entities to obtain a global intermediary identification number (“G.I.I.N.”). The upgraded system will also allow users to update their information, download registration tables, and change their financial institution type.

F.A.T.C.A. requires certain sponsored entities, including those to which an I.G.A. is applicable, to have their own G.I.I.N. for F.A.T.C.A. reporting and withholding purposes. The regulations allowed sponsored entities to use the sponsoring entity’s G.I.I.N. until the date a streamlined procedure for registration of sponsored entities was published by the I.R.S. or, if later, December 31, 2015. In October, the I.R.S. pushed back the latter date to December 31, 2016; however, prior to the November 16 upgrade, sponsoring entities could not register their sponsored entities. This upgrade allows sponsoring entities to add sponsored entities and, if applicable, sponsored subsidiary branches. These entities can be added one-by-one or all at once by submitting a file containing information for multiple entities. In a November 23 press release, Commissioner John Koskinen said that:

These upgrades improve the F.A.T.C.A. process, enabling the registration of sponsored entities and making it easier for registrants to use. Working with financial institutions and through intergovernmental agreements, our progress against undisclosed foreign accounts continues.

In the press release, the I.R.S. said that, to date, more than 170,000 financial institutions located in more than 200 jurisdictions have registered with the I.R.S.

As part of this upgrade, the I.R.S. issued an updated online registration guide, which, among other changes, is a shorter and easier to understand version of the old guide issued in October 2014. The new guide includes several updates; among other changes, it adds two new registration questions. Question 3B asks for the financial institution’s tax identification number in its country or jurisdiction, and the two-part Question 13 requests common parent entity information. In 13A, the financial institution must disclose whether it is the common parent entity of an expanded affiliated group. In 13B, if the financial institution is not the common parent of its group, it must then provide the legal name of the common parent entity, as well as its F.A.T.C.A. identification number, if known.

COMPETENT AUTHORITY AGREEMENTS SIGNED

To facilitate the exchange of information under F.A.T.C.A. and to establish and prescribe the rules and procedures necessary to implement certain provisions in an intergovernmental agreement ("I.G.A."), the competent authorities of the U.S. and an I.G.A. partner should sign a Competent Authority Arrangement ("C.A.A."). The first C.A.A.'s were signed by the U.K. and Australia in late September. The I.R.S. then said it expects that numerous other C.A.A.'s with additional competent authorities in I.G.A. jurisdictions "will be signed in the near future."

That process is now beginning on a more routine basis:

- On October 1, the U.S. released the official text of the C.A.A. signed with Mauritius and the Czech Republic in accordance with the I.G.A. signed between the U.S. and these two countries;
- On October 19, the U.S. released the C.A.A. signed with Estonia;
- On October 20, the C.A.A. signed between the U.S. and South African competent authorities entered into force;
- On October 21, the U.S. released the C.A.A. signed with Mexico;
- On October 26, the U.S. released the C.A.A. signed with Malta;
- On November 9, the Irish and U.S. competent authorities signed a C.A.A.;
- On November 10, the Isle of Man and U.S. competent authorities released the C.A.A., which was signed on October 14 by the U.S. and on September 17 by Isle of Man;
- On November 15, the U.S. released the C.A.A. signed with Latvia; and
- On November 24, the U.S. released the C.A.A. signed with Denmark.

Additional C.A.A.'s were signed with Luxembourg, Liechtenstein, India, Guernsey and New Zealand, among other countries. All C.A.A.'s will become operative on the later of the date the applicable I.G.A. enters into force, or the date the C.A.A. is signed by the U.S. and the partner country.



ADDITIONAL FOREIGN GUIDANCE

On November 16, the Turks and Caicos Islands government issued guidance notes on the compliance requirements of its I.G.A. with the U.S., as well as its tax information exchange agreement with the United Kingdom.

On November 13, Russia's Central Bank released new guidelines to clarify how banking businesses should implement F.A.T.C.A. and the related provisions of the Russian legislation. On June 28, 2014, Russia passed new legislation to implement F.A.T.C.A. Such law allowed Russian financial institutions to share information directly with foreign tax authorities and to withhold applicable foreign taxes. According to the newly released guidance, Russian banks are required to notify the Russian

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tax authorities about registration with overseas tax authorities and about sending any reports to foreign tax agencies, including “zero” reports reflecting that there are no foreign accounts maintained. Additionally, Russian financial institutions may discontinue rendering financial services to clients who object to their information being reported. Russia still, however, has not signed an I.G.A. with the U.S.

On November 11, the *Georgian Official Gazette* published amendments to laws regarding

- activities of commercial banks,
- micro-finance organizations, and
- non-state pension insurance and security.

The amendments clarified disclosure provisions affected by the I.G.A. signed with the U.S. on July 10, 2015. According to such amendments, Georgian commercial banks may refuse to open or close an existing account of a taxpayer who does not provide the required information under the I.G.A.

On November 3, the German Ministry of Finance published, in German, a memorandum on implementing its I.G.A. with the United States.

ANGOLA I.G.A. AVAILABLE

On November 9, Angola and the U.S. signed a non-reciprocal Model 1 I.G.A. The text of the I.G.A. was released on the same day. The I.G.A. was treated as in effect as of November 30, 2014.

PRIVACY & F.A.T.C.A.: TWO WORLDS APART

At the International Conference on Taxpayer Rights held in Washington D.C. on November 19, panelists discussed concerns about the movement for international exchange of tax information that started with F.A.T.C.A. but has been gaining momentum due to the O.E.C.D.’s initiative for the Common Reporting Standard (“C.R.S.”), which is set to begin within early enforcer countries on January 1, 2016. While demands for tax transparency have grown quickly in recent years, fundamental rights to personal privacy enshrined in E.U. treaties may hamper the implementation of new information exchange rules, some speakers warned.

“We have moved very far and fast from exchange of information on demand,” Philip Baker QC of Field Court Tax Chambers in London said to several hundred tax professionals from 22 countries around the world. “Very little attention has been paid to privacy safeguards.”

The E.U.’s Data Protection Working Party has warned repeatedly that F.A.T.C.A., the C.R.S., and other data exchange proposals could subject Europeans to transfers of personal data to countries such as the U.S. that lack strong data protection, Baker said. Notwithstanding the panelists’ concerns, implementation of F.A.T.C.A. and the C.R.S. are still proceeding.

UPDATES TO F.A.Q.'S ON FOREIGN FINANCIAL INSTITUTIONS

On November 19, the I.R.S. revised a list of F.A.T.C.A. frequently asked questions (“F.A.Q.’s”) on its searchable and downloadable list of foreign financial institutions (“F.F.I.’s”) that have registered to be compliant under F.A.T.C.A.. The revisions updated many questions and added more on F.F.I. list fields, downloading, and legal entity names.

One addition was Question 3 under the searchable header, which addresses a question many clients have asked: “Why are there multiple global indemnification numbers (“G.I.I.N.’s”) associated with a financial institution or branch (same F.I. name and same country/jurisdiction)?”

The I.R.S. indicated that there are three reasons why this will occur. The first reason is that the entity is both a financial institution (“F.I.”) and a sponsoring entity, which requires a separate registration. The second reason is that the entity recently completed a change of F.I. type or a transfer to an expanded affiliated group (“E.A.G.”). Lastly, the third reason given was that when an F.I. is in the process of transferring into another E.A.G. or changing its F.I. type, it will appear multiple times on the F.F.I. List depending on the number of changes/transfers.

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

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Colombia	Kazakhstan	St. Lucia
Costa Rica	Kosovo	St. Vincent & the Grenadines
Croatia	Kuwait	Sweden
Curaçao	Latvia	Thailand
Cyprus	Liechtenstein	Trinidad & Tobago
Czech Republic	Lithuania	Tunisia
Denmark	Luxembourg	Turkey
Dominica	Malaysia	Turkmenistan
Dominican Republic	Malta	Turks & Caicos Islands
Estonia	Mauritius	Ukraine
Finland	Mexico	United Arab Emirates
France	Montenegro	United Kingdom
Georgia	Montserrat	Uzbekistan
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.