

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

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Tags

F.A.T.C.A.

F.F.I.

I.G.A.

Reporting Requirements

CHANGES TO F.A.T.C.A. REGULATIONS WILL EASE BURDENS ON F.F.I.'S

In January 2016, the I.R.S. published Notice 2016-8, in which it announced that it intends to amend some of the regulations with respect to both Chapter 3 – Withholding of Tax on Nonresident Aliens and Foreign Corporations and Chapter 4 – F.A.T.C.A. Withholding. The intended changes include

- modification of the date for submitting to the I.R.S. the pre-existing account certifications required for certain foreign financial institutions (“F.F.I.’s”);
- specification of the period and date for submitting to the I.R.S. the periodic certification of compliance described in the F.A.T.C.A. regulations for a Registered Deemed-Compliant F.F.I.;
- modification of the transitional information reporting rules for accounts of Nonparticipating F.F.I.’s to eliminate the requirement to report on gross proceeds for the 2015 year; and
- specification of the circumstances under which a withholding agent may rely upon electronically-furnished W-8 forms (*i.e.*, withholding certificates) and Forms W-9, *Request for Taxpayer Identification Number and Certification*, collected by intermediaries and flow-through entities.

Before the ink was dry, the I.R.S. corrected the notice in February on two favorable points. The first change clarifies that the additional time allowed for a Participating F.F.I. or Reporting Model 2 F.F.I. to provide pre-existing account certifications includes the F.F.I.’s certification that it did not have practices and procedures to assist account holders in the avoidance of Chapter 4. The second change removes an incorrect reference to a regulation.

Until changes are formally adopted in the regulations, taxpayers may rely on the notice.

TREASURY FINALIZES DOMESTIC ENTITY REPORTING REGULATIONS

Pursuant to Code §6038D(a), which was enacted as part of F.A.T.C.A., the I.R.S. developed Form 8938, *Statement of Specified Foreign Financial Assets*, which individuals use to report certain financial assets held offshore. Code §6038D(f) allowed the I.R.S. to extend reporting to certain domestic entities. On February 22, 2016, the I.R.S. adopted final regulations implementing entity reporting. The new entity reporting rules apply to taxable years beginning after December 31, 2015.

Section 6038D(f) provides that §6038D reporting applies to domestic entities formed or used for purposes of holding specified foreign financial assets. Under the previously issued Prop. Treas. Reg. §1.6038D-6(b)(1)(iii), a corporation or partnership was treated as if it was formed for the purpose of holding specified foreign financial assets if it had over 50% passive assets or if at least 10% of the assets were passive and it was formed with the principal purpose of avoiding reporting under Code §6038D. The final regulations eliminate the principal purpose test for determining whether Code §6038D applies under §6038D(f).

SWISS ATTORNEYS' CONFIDENTIAL CLIENT ESCROW ACCOUNTS EXEMPT FROM F.A.T.C.A.

Pursuant to an amendment to Annex II of the I.G.A. between the U.S. and Switzerland dated March 1, 2016, Swiss financial institutions ("F.I.'s") are exempt from certain F.A.T.C.A. reporting requirements regarding confidential accounts held by Swiss attorneys. This exemption reflects the terms of the Swiss banking industry's Due Diligence Agreement, a self-regulatory code of conduct overseen by the Swiss Financial Market Supervisory Authority. Under the exemption, Swiss F.I.'s do not have to identify clients associated with accounts held by lawyers or notaries in the ordinary course of business as long as they provide written verification that the accounts fall within the scope of the exception clause in Annex II of the I.G.A. Examples of accounts which will fall within the scope of this exemption are accounts held in escrow after the settlement of a lawsuit, funds kept for holding a retainer, and funds held in escrow to facilitate inheritance or divorce, among other purposes.

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HUNGARY TO EXPLAIN DUE DILIGENCE PROCEDURES

The Hungarian Tax and Customs Administration recently enacted a law implementing automatic exchange of tax information under F.A.T.C.A. and the E.U. Directive (for the Common Reporting Standard). Under the new law, certain information must be reported to the tax authorities in certain forms by February 15 of each year. The announcement issued last month explained how to comply with this law and provided that the tax authority will impose a penalty of 2 million Hungarian forints (currently, U.S. \$7,200) for non-compliance with the deadline for filing certain forms.

I.R.S. STILL INTERESTED IN PUBLIC COMMENTS ON F.A.T.C.A.

Despite the fast-approaching, six-year anniversary of F.A.T.C.A., the I.R.S. is still interested in receiving public comments on reporting under F.A.T.C.A., according to Nancy Lee, senior technician reviewed, Office of Chief Counsel (International). The announcement came at the annual meeting of the Federal Bar Association Section on Taxation in Washington on March 4, 2016.

COMPETENT AUTHORITY AGREEMENTS REACHED WITH SEVERAL PARTIES TO I.G.A.'S

I.G.A.'s provide that the Competent Authorities of the two parties to the agreement shall enter into an agreement under the mutual agreement procedure provided in the applicable Exchange of Tax Information Agreement in order to establish and prescribe the rules and procedures necessary to implement certain provisions in the I.G.A.

- On March 2, 2016, the Colombian and U.S. Competent Authorities reached the necessary agreement.
- On February 23, 2016, the Brazilian and U.S. Competent Authorities reached the necessary agreement.
- On February 18, 2016, the Italian and U.S. Competent Authorities reached the necessary agreement.

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 following countries are Model 1 partners by execution of an agreement or concluding an agreement in principle:

Algeria	Gibraltar	Netherlands
Angola	Greece	New Zealand
Anguilla	Greenland	Norway
Antigua & Barbuda	Grenada	Panama
Australia	Guernsey	Peru
Azerbaijan	Guyana	Philippines
Bahamas	Haiti	Poland
Bahrain	Holy See	Portugal
Barbados	Honduras	Qatar
Belarus	Hungary	Romania
Belgium	Iceland	Saudi Arabia
Brazil	India	Serbia
British Virgin Islands	Indonesia	Seychelles
Bulgaria	Ireland	Slovak Republic
Cabo Verde	Isle of Man	Slovenia
Cambodia	Israel	South Africa
Canada	Italy	South Korea
Cayman Islands	Jamaica	Spain
China	Jersey	St. Kitts & Nevis
Colombia	Kazakhstan	St. Lucia
Costa Rica	Kosovo	St. Vincent & the Grenadines
Croatia	Kuwait	Sweden



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Curaçao	Latvia	Thailand
Cyprus	Liechtenstein	Trinidad & Tobago
Czech Republic	Lithuania	Tunisia
Denmark	Luxembourg	Turkey
Dominica	Macao	Turkmenistan
Dominican Republic	Malaysia	Turks & Caicos Islands
Estonia	Malta	Ukraine
Finland	Mauritius	United Arab Emirates
France	Mexico	United Kingdom
Georgia	Montenegro	Uzbekistan
Germany	Montserrat	

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.