

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

### Authors

Galia Antebi  
Philip R. Hirschfeld

### Tags

F.A.T.C.A.  
F.F.I.  
I.G.A.  
Reporting Requirements

## U.S. APPROVES THREE MORE COUNTRIES FOR EXCHANGE OF INFORMATION

The latest step in F.A.T.C.A. implementation is an expansion of the list of countries with which automatic exchange of information is deemed to be appropriate, with respect to bank interest paid to nonresident aliens. The addition of three new countries is provided under of Revenue Procedure 2016-18. The statement includes a complete, updated list of countries, which now stands at 37. The three countries that have been added are Azerbaijan, Jamaica, and the Slovak Republic.

The rule allowing the I.R.S. to report certain deposit interest paid to nonresident alien individuals applies to interest paid on or after January 1, 2013.

## ATTEMPTS TO BLOCK F.A.T.C.A. – CANADIAN UPDATE

Many readers may remember that before Canada first exchanged F.A.T.C.A.-related information with the U.S., two U.S.-born Canadians filed suit against the Canadian government asserting that the Inter-Governmental Agreement (“I.G.A.”) between the two countries violates Canadian constitutional rights and cedes Canadian sovereignty. At the time, the Canadian government supported F.A.T.C.A. and rejected these assertions in court. The Federal Court of Canada ruled against the allegations and subsequently rejected an application for an injunction to block the first transfer of F.A.T.C.A.-related information pending a hearing of the constitutional allegations. To date, the hearing has yet to be scheduled, but the first bilateral transfer of about 155,000 information slips did occur on September 30, 2015, as anticipated.<sup>1</sup>

Before coming to power in late 2015, Liberal Party leaders, including current prime minister Justin Trudeau, voiced concerns regarding F.A.T.C.A. According to Canadian publications,<sup>2</sup> the prime minister described the concept of reporting to a foreign government on Canadian citizens’ actions as “troublesome,” and called the prior administration’s efforts to protect Canadians’ privacy “inadequate.”

In spite of these concerns, and much to the litigants’ discontent, the current administration has stated it will continue to comply with F.A.T.C.A. as required under the

<sup>1</sup> Galia Antebi and Philip R. Hirschfeld. “[The Transparent World: Exchange of Information Has Begun & Pacts to Assist Implementation Have Been Signed.](#)” *Insights* 9, (2014).

<sup>2</sup> Thompson, Elizabeth. “[Revenue Canada Quietly Handed 155,000 Canadian Banking Records to IRS.](#)” *iPolitics*. March 16, 2016.



I.G.A. Canada will continue to provide the I.R.S. with F.A.T.C.A.-related information regarding U.S. citizens living within its borders. However, national revenue minister Diane Lebouthillier said that the government takes the issue of privacy very seriously and will ensure that all such exchanges are subject to strict confidentiality rules that protect Canadians' interests.

It seems that the litigants will be forced to continue their efforts to collect donations to fund the lawsuit as they wait for the hearing to be scheduled. In the hearing, the group representing the litigants, the Alliance for the Defense of Canadian Sovereignty ("A.D.C.S."), is expected to argue that "threats of economic sanction from the U.S. is not sufficient justification to take away constitutional rights of Canadian," according to A.D.C.S. chairman Stephen Kish.

## **CHANGES TO ENCRYPTION MODE FOR F.A.T.C.A. EXCHANGE**

The I.R.S.'s International Data Exchange Service, or "I.D.E.S.," will not accept data packets encrypted using the Electronic Code Book ("E.C.B.") mode of operation after July 8, 2016. Instead, starting July 9, all users must transmit data packets encrypted using the Cipher Block Chaining ("C.B.C.") mode. The reason for the update is that the C.B.C. is a more complex algorithm and therefore a more secure method of encrypting data. C.B.C. encryption can be implemented in code or by the user's software of choice.

## **MORE COMPETENT AUTHORITY AGREEMENTS ADDED**

The U.S. continues to sign more competent authority agreements relating to F.A.T.C.A. enforcement.

On June 30, 2014, Israel and the U.S. signed a Model 1 reciprocal I.G.A. On April 6, 2016, the U.S. and Israel competent authorities signed an arrangement under the I.G.A. to implement compliance under F.A.T.C.A.

On December 16, 2014, Curaçao and the U.S. signed a Model 1 reciprocal I.G.A. On April 6, 2016, the U.S. and Curaçao competent authorities signed an arrangement under the I.G.A. to implement compliance under F.A.T.C.A.

On November 19, 2015, St. Lucia and the U.S. signed a Model 1 reciprocal I.G.A. On April 6, 2016 the U.S. and St. Lucia competent authorities signed an arrangement under the I.G.A. to implement compliance under F.A.T.C.A.

## **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
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 U.S. continues to sign more competent authority agreements relating to F.A.T.C.A. enforcement.”***

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.