

# WEALTH PLANNING IN THE “NEW INFORMATION AGE”

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HOW DOES F.A.T.C.A.  
AFFECT THE PRACTICE  
OF PLANNING

Galia Antebi  
[antebi@ruchelaw.com](mailto:antebi@ruchelaw.com)

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# F.A.T.C.A. INFORMATION EXCHANGE

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# FATCA - Overview

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- New reporting regime aimed to prevent tax evasion by U.S. persons
- F.F.I. responsibility
- N.F.F.E.'s responsibility
- Compliance enforced through additional 30% withholding tax on “withholdable payments” made to non-compliant F.F.I.'s
- Withholding as of July 2014
- Over 100 I.G.A.'s in effect or agreed to in substance

# I.G.A.'s

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- I.G.A.'s incorporate F.A.T.C.A. into local laws
- I.G.A.'s control due diligence and reporting obligations outside the U.S.
- I.G.A. coverage not certain
- Generally covers tax residents
- Swiss problem

# No Effective I.G.A.

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- Where to report
- When to report
- What to report :
  - Today
  - In 2016
  - In 2017
- Which accounts to report
- “Account” defined

# Effective I.G.A. Applicable

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- Model 1 I.G.A.
- Model 2 I.G.A.
- With whom to report
  - Model 1 I.G.A.
  - Model 2 I.G.A.
- When to report
  - Model 1 I.G.A.
  - Model 2 I.G.A.
- What to Report
- Which accounts to report

# Planning Using Trusts – “Old” World

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- Discretionary trusts
  - Current distributions
  - Accumulation distributions
- Grantor trust plan
  - Substantive tax treatment
  - Information reporting treatment
- Disclosure

# Trusts – “New” World

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- Trust to determine F.A.T.C.A. status
- Accounts held by grantor trusts
- “Account holders”
- Disclosure
- Discretionary beneficiaries
- Additional obligations:
  - Need responsible officer
  - Monitor change in circumstances
- Effect of I.G.A.



# EXCHANGE OF INFORMATION UNDER OTHER REGIMES

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# C.R.S.

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- What it is
- Countries that have signed on
- Information to be reported
- Comparison to F.A.T.C.A. I.G.A.

# F.A.T.C.A.                      V.                      C.R.S.

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- Geared to U.S. citizenship
  - 30% withholding on certain U.S. source payments and “passthru payments” as a sanction for noncompliance
  - F.I.’s to register and obtain G.I.I.N. to be provided to 3<sup>rd</sup> parties as evidence of compliance
  - First report due September 30, 2015 with respect to 2014
- Geared towards residence
  - No penalizing withholding on payments. Other penalties may apply
  - No equivalent to G.I.I.N.
  - First report due September 2017 for early adopters who will begin implementing on January 2016

# EU Commissioner Proposal

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- March 18, 2015 proposal to amend Directive 2011/16/EU
- Package of measures to boost tax transparency
- Key element is a proposal to introduce the automatic exchange of information between Member States with respect to tax rulings
- Aims to avoid self aid of member states

# HOW DOES THE TRANSPARENT NEW WORLD IMPACT TAX PLANNING?

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# The Transparent New World

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- The No. 1 Rule: there is nowhere to hide
- The 2<sup>nd</sup> Rule: FATCA applies even if no U.S. situs asset

# Importance of Compliance

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- Being right without compliance = being wrong
- Three levels of compliance:
  - Country of formation
  - Other countries used in the structure
  - Country of ultimate beneficiary
- Presence of U.S. assets not relevant
- Penalties for noncompliance :
  - Inability to invest through F.F.I.'s
  - Local penalties under I.G.A.
  - Withholding in future

# Global Family with U.S. Persons

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- Exclusion of U.S. beneficiaries from main plan
- Compliance with CRS
- Separate plans



# Fact Pattern 1

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- A trust established under laws of Jersey
- Swiss trust company as trustee
- Potentially U.S. beneficiaries
- No U.S. assets; no U.S. payments expected
- Query:
  - Is registration with I.R.S. required?
  - Which I.G.A. applicable, if any?
  - How will not registering affect this trust?
  - Is there a withholding risk?

# Fact Pattern 2

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- A trust established under laws of Jersey
- One of the trustees is a Jersey resident and one a Swiss resident. Both are F.F.I.'s themselves
- Potential U.S. beneficiaries
- No U.S. assets; no U.S. payments expected
- Query:
  - Which I.G.A. applicable, if any?
  - What if the second trustee was a resident of the U.K.?
  - Is registration with I.R.S. required?
  - How will not complying affect this trust?
  - Is there a withholding risk?

# Fact Pattern 3

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- A trust established under laws of Jersey
- Trust only asset is non-debt real property
- Potential U.S. beneficiaries
- Query:
  - Is registration required?
  - How will not complying affect such trust?

# Conclusion

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- Determine the level of compliance
- Be assured that compliance takes effect at all levels
- Communicate with other jurisdictions
- Minimize exposure to new world rules:
  - Separate trusts for U.S. citizens or residents
  - Separate further based on residency
  - Avoid mandatory beneficiaries

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i n t e r n a t i o n a l  
t a x a t i o n

**NEW YORK**

Ruchelman P.L.L.C.  
Architects and Designers Building  
150 East 58th Street, 22nd Floor  
New York, New York 10155  
Tel. 212-755-3333

**TORONTO**

Ruchelman P.L.L.C.  
The Exchange Tower, P.O. Box 233  
130 King Street West, Suite 2300  
Toronto, Ontario M5X 1C8  
Tel. 416-350-2026

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