




Exchange of Information: Foreign Account Tax Compliance Act (FATCA)



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**Large Business
& International**

Environment: Reports of Offshore Tax Evasion

- ❖ United States relies on voluntary tax compliance – taxpayers report and pay taxes
- ❖ Tax gap exists when voluntary system breaks down
- ❖ Reports surfaced in 1990's of taxpayer use of offshore accounts to launder money/evade U.S. taxes
- ❖ 2008 – Tax scandals showing use of offshore accounts by U.S. taxpayers: LGT Bank in Liechtenstein and UBS in Switzerland

Legislation

- ❖ A multi-year effort to address use of offshore accounts
- ❖ FATCA enacted on March 18, 2010
- ❖ Requires three types of reporting:
 - U.S. taxpayers report specified foreign financial assets
 - Foreign financial institutions (FFIs) report accounts held by U.S. taxpayers
 - U.S. withholding agents report U.S. owners in certain foreign entities

Summary of FATCA

- ❖ FATCA Requirements for U.S. withholding agents and FFIs set forth in final regulations released in January 2013
- ❖ General obligations of FFI:
 - Enter into agreement with IRS (FFI agreement)
 - Perform due diligence to identify U.S. account holders and non-participating FFIs
 - Report information on U.S. account holders to IRS
- ❖ Failure to comply with obligation to execute an agreement results in 30% withholding on withholdable payments to FFI
- ❖ Exceptions for certain FFIs:
 - Deemed-compliant with FATCA requirements (no need to execute an FFI agreement)
 - Exempt beneficial owners – low risk of tax evasion

Evolution of Intergovernmental Agreements

- ❖ Recognition in statute that domestic law might prevent FFI from reporting – required account holder waiver to apply law
- ❖ FATCA statute requires that if no waiver is obtained from a U.S. account holder to allow reporting, this account holder is also considered recalcitrant and FFI must close account
- ❖ Proposed FFI regulations (February 2012) – referred to alternative approach of government-to-government reporting of required account information

Joint Statements

- ❖ February 2012 Joint Statement from United States, France, Germany, Italy, Spain, and the United Kingdom
- ❖ Addresses situation where FFI cannot report directly to IRS
- ❖ Intergovernmental Agreement eliminates need for FFI agreement
- ❖ FFI reports to foreign government; automatic exchange of information with IRS

Joint Statements – cont'd

- ❖ June 2012 Joint Statements with Japan and Switzerland
- ❖ Foreign government directs FFI to register with IRS – may require separate FFI agreement
- ❖ FFI reports individual account information for cooperative U.S. account holders
- ❖ FFI reports aggregate account information for non-consenting (recalcitrant) account holders
- ❖ IRS may make group request under tax treaty for individual account information

Model Intergovernmental Agreements

- ❖ 2 versions – Model 1 and Model 2
- ❖ Customization in Annexes
- ❖ Annex II – identifies entities and products presenting low risk of use to evade U.S. tax or deemed-compliant FFI status: no reporting and no withholding
 - Exempt Beneficial Owners
 - Deemed-Compliant Financial Institutions
 - Registered deemed-compliant
 - Certified deemed-compliant
 - Exempt Products

Model 1 Intergovernmental Agreement (IGA)

- ❖ Reporting FATCA Partner Financial Institution reports U.S. account information to FATCA Partner under implementing legislation
- ❖ FATCA Partner exchanges information with IRS; in reciprocal version, IRS exchanges certain account information with FATCA Partner about its residents
- ❖ FATCA Partner Financial Institution must register with IRS – no separate FFI agreement
- ❖ IGA applies to all FATCA Partner Financial Institutions if they comply with terms of IGA

Model 1 IGA – cont'd

- ❖ Recalcitrant account holders
 - FFI not required to close account or withhold on passthru payments
 - FFI must provide identifying information to FATCA Partner about the account holders (which in turn sends the information to the IRS)
- ❖ FATCA Partner commits to having rules in place by January 1, 2017, requiring that FFI obtain U.S. TINs of U.S. account holders

Model 2 IGA

- ❖ Facilitates direct reporting to IRS by FATCA Partner Financial Institution
- ❖ FFI must register with IRS and must comply with terms of FFI Agreement, if required to sign one
- ❖ Aggregate account information may be provided for recalcitrant account holders
- ❖ IRS can make group request for individual account information under exchange of information provisions of tax treaty

Model 2 IGA – cont'd

- ❖ FFI not required to close accounts of, or withhold on passthru payments to, recalcitrant account holders
- ❖ FFI reports aggregate number and value of recalcitrant accounts
- ❖ FFI also reports either specific payee or aggregate information on certain payments to non-participating FFIs

Final Regulations

- ❖ Issued in January 2013
- ❖ Acknowledges both Model 1 and Model 2 IGAs
- ❖ Model 1 - provisions of agreement apply instead of the final regulations unless indicated otherwise
- ❖ Model 2 – provisions of final regulations apply unless provisions of Model 2 specifically differ
 - Model 2 provides separate due diligence annex that the FFIs may apply

Transmission of Information

- ❖ Form 8966, FATCA Report – used by FFIs applying final regulations or IGA Models to report relevant account information
- ❖ Information due by March 31 of following year; 2013 report due by March 31, 2015 (Model 2 and regulations)
- ❖ Information due by September 30 of following year in Model 1 IGAs; 2013 report due by September 30, 2015
- ❖ Model 2 IGA may have earlier deadline for reporting aggregate information on recalcitrant account holders – January 31 in IGA with Switzerland – to enable timely account holder reporting

Automatic Exchange of Information

- ❖ Information most useful if reporting format consistent
- ❖ Problems in obtaining consistent format
 - Taxpayer identification: some countries use taxpayer identification numbers; others use birth dates
 - Addresses: some countries have different ordering for addresses (city, postal or zip code, state, province or country; postal code, city, country)
- ❖ United States and OECD collaborated to develop a uniform Schema for Financial Institutions to use to report account information whether IGA jurisdiction or Classic FATCA

Current State of Automatic EOI/Data Transmission

There is no standard electronic transmission method in place for the bulk transfer of tax data or for EOI in general

Most exchange is still carried out by sending physical media (CDs/DVDs/Paper)

Multiple transmission methods cause administrative burden and cost to tax administrations and impede efficient use of data



Current State of Automatic EOI/Data Transmission (cont'd)

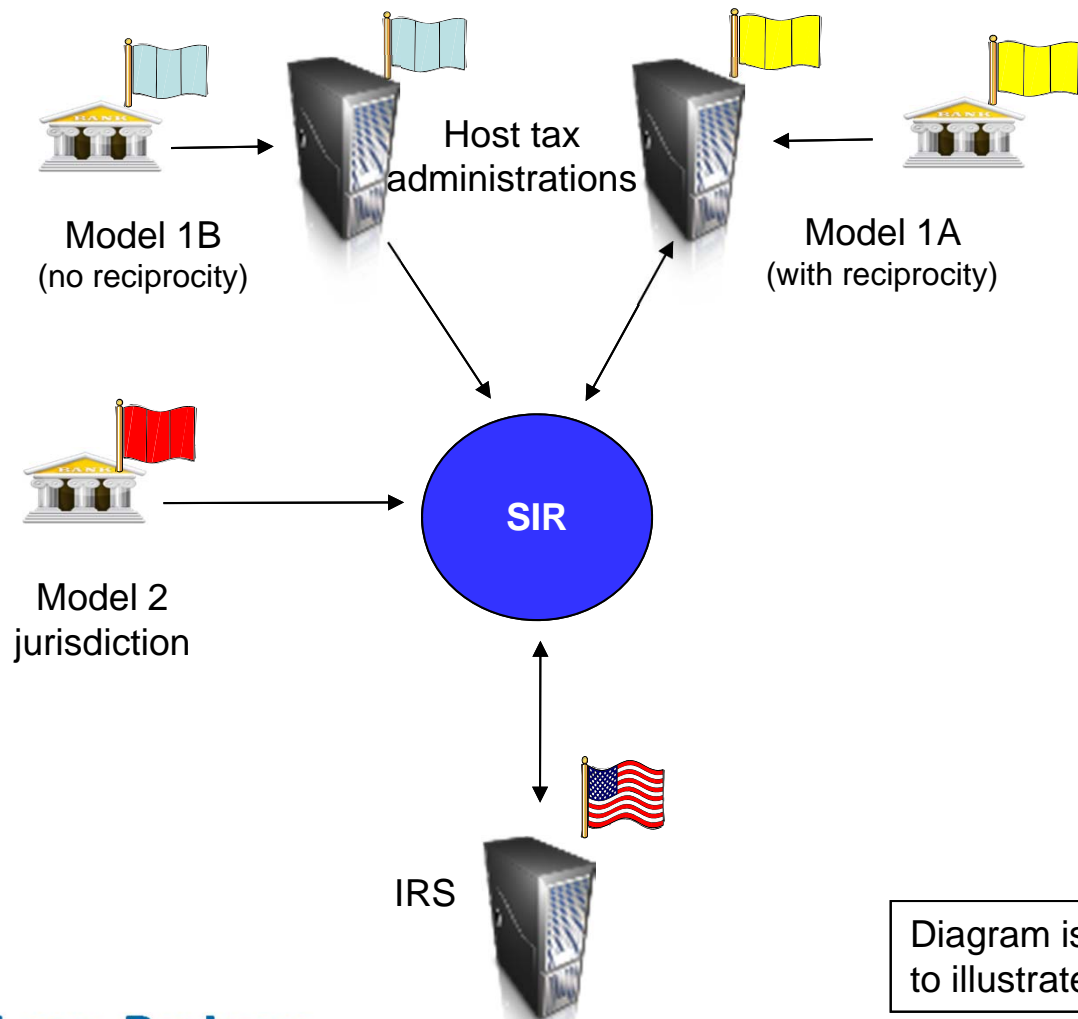
The TRACE IT Expert Group recognized the benefits of a standardized transmission method, recommending a Secure FTP to exchange TRACE data

- ▶ FATCA and the use of AEOI brings urgency to the implementation of a secure standard transmission method
- ▶ Technology that exists today provides the means to implement a fast, secure electronic transmission process
- ▶ Current technology options will not only work to implement FATCA, but will also allow for the modernization of diverse forms of bulk exchange

Key Considerations for FATCA Transmission

- ▶ Under a Model 1 IGA, effective EOI requires that data be delivered by the “host country” to the “residence country” through secure electronic transmission
- ▶ Where data will be transmitted reciprocally, the transmission system architecture must accommodate a two-way data flow
- ▶ The choice of transmission architecture is independent of the choice of collection architecture; that is, once HCTA has account data positioned for exchange, it must decide how exchange will occur electronically

Various data flows to IRS



Description

- ❖ IRS will collect information from various sources by providing a URL to which data would be transmitted
- ❖ So IRS can meet its reciprocal obligations, the “system” will need to operate as a secure “intelligent router” (“SIR”)
- ❖ Both the data files and the transmission itself would be secured with a high level of encryption

Diagram is conceptual and does not attempt to illustrate a specific systems architecture

Potential Uses of Information

- ❖ Match information from reports from United States account holder and FFI
- ❖ Identify instances where account holder does not report
- ❖ Identify instances where Financial Institutions do not report
- ❖ Other jurisdictions, e.g., Isle of Man and United Kingdom, are considering similar arrangements

Important Dates

- ❖ July 15, 2013 – FATCA Portal open for registration of participating FFIs and registered deemed-compliant FFIs
- ❖ Beginning by October 15, 2013, at the latest – Each registered and approved FFI issued a Global Intermediary Identification Number (GIIN)
- ❖ October 25, 2013 – Last date to register and be on first list of participating and registered deemed-compliant FFIs
- ❖ December 2, 2013 – First list of such FFIs published