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The Next Chapter in the FATCA Saga: US Treasury releases Model Intergovernmental FATCA Agreement

http://bepartners.pro/neu/documents/2012-07-26_FATCA_reciprocal.pdf
http://bepartners.pro/neu/documents/2012-07-26_FATCA_nonreciprocal.pdf

Last Thursday, July 26 2012, the US Treasury issued a model intergovernmental agreement to improve tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). This model agreement was developed in cooperation with the other five FATCA Partners, namely France, Germany Italy, Spain and the U.K.

The so-called intergovernmental approach was agreed upon by the US and the five FATCA Partners as a solution for various problems that arose in connection with the implementation of FATCA abroad. These problems included legal issues, such as data privacy concerns, as well as justifiable concerns about exploding costs to be borne by foreign financial institutions (FFIs) for the implementation of a US tax law.

In order to resolve some of these problems, the US and the FATCA Partners agreed to introduce the so-called intergovernmental approach in February of this year. This approach would obligate these countries to enter into bilateral agreements and pursue necessary implementing legislation to require FFIs located in these countries to collect and report the information required under FATCA to their local tax authorities. One of the interesting aspects of this approach was the fact that the US committed to reciprocity with respect to collecting and reporting certain information of the US accounts of FATCA Partner residents to the authorities of the FATCA Partner on an automatic basis.

In order to reflect this reciprocity, the US Treasury published both a reciprocal and a nonreciprocal version of the model intergovernmental agreement last Thursday. The reciprocal version is intended to be made available to countries with which the US currently has an income tax treaty or tax information exchange agreement and the IRS has determined that the recipient government has practices and effective protections in place to ensure that the information is not only treated confidentially but also used solely for tax purposes. On the basis thereof, Germany would be able to enter into such a reciprocal intergovernmental agreement with the US.

The intergovernmental efforts of the US and the FATCA Partners appear to be laudable on paper. However, practical implementation of this approach may be more difficult than initially apparent, particularly for the US and their financial institutions. While a German FFI need only report on US accountholders under FATCA, the Treasury has now imposed the obligation on US financial institutions to report on the accountholders of at least five nations. The list of countries entering into reciprocal agreements with the US will increase as the implementation dates for FATCA grow nearer. US financial institutions have been slow to realize the extent of their ever-increasing reporting obligations under the intergovernmental approach. It remains to be seen whether or not US financial institutions and the US Treasury will be able to uphold their side of the bargain.

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Any questions? Please do not hesitate to contact us!

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