THE IFA's Wealth Gram

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FATCA Rolls On - Ongoing Negotiations Announced with 50 Countries

As we noted in our blog "IRS Moves FATCA Timelines", the IRS has pushed back the dates for implementation of various provisions of FATCA – but the Department of Treasury and IRS are not sitting still.

On November 8th Treasury announced: *"… that it is engaged with more than 50 countries and jurisdictions around the world to improve international tax compliance and implement the information reporting and withholding tax provisions commonly known as the Foreign Account Tax Compliance Act (FATCA)."*

The announcement goes on: ***"The Treasury Department has already concluded a bilateral agreement with the United Kingdom. Additional jurisdictions with which Treasury is in the process of finalizing an intergovernmental agreement (IGA) and with which Treasury hopes to conclude negotiations by year end include: France, Germany, Italy, Spain, Japan, Switzerland, Canada, Denmark, Finland, Guernsey, Ireland, Isle of Man, Jersey, Mexico, the Netherlands, and Norway."*** Since this announcement, Denmark announced it has signed a FATCA IGA Model 1 reciprocal agreement similar to the United Kingdom IGA.

Active dialogue is in place with: Argentina, Australia, Belgium, the Cayman Islands, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Malaysia, Malta, New Zealand, the Slovak Republic, Singapore, and Sweden. In addition, initial discussions have begun with: Bermuda, Brazil, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Lebanon, Luxembourg, Romania, Russia, Seychelles, Saint Maarten, Slovenia, and South Africa. It is expected that about 17 IGAs will be concluded by the end of this year.

Furthermore, on November 14, 2012, Treasury published the Model 2 Intergovernmental Agreement for cooperation to facilitate the implementation of FATCA. Model 2 requires that financial institutions report directly to the IRS, rather than their home countries as required by Model 1. Model 2 and is largely consistent with Model 1, though containing certain nuances regarding collective investment vehicles and other institutional investors as exempt financial institutions. As of this past Monday, Switzerland recently announced that it had signed a preliminary agreement with the Treasury based on the Model 2 IGA.

Why should so many countries be rushing to sign an IGA with the USA?

Under principles of reciprocity, most countries currently in IGA negotiations with IRS will obtain financial on their own citizens. For example, the UK will receive from the IRS the name, address and US bank and brokerage account details of UK residents with accounts in the US. HMRC will then gladly seek to match information they have on file for UK tax residents against the US bank/brokerage accounts received from the IRS with the aim of uncovering undisclosed assets of its taxpayers. In exchange, the IRS will receive details from UK banks and brokerage houses on accounts owned by US citizens, and US green card holders and residents.

In looking at the number of countries that are currently in discussions with the IRS, it appears many countries in the world are in favor of the type of fiscal transparency and exchange of information the US government is pushing with FATCA. In a reciprocal environment, both governments will be receiving information about potential taxable income which may not have been reported and taxed. The cost of gathering this information is born by the banks and financial institutions, not the governments. Since most governments need additional tax revenue, the idea of having many banks and financial institutions around the world bear the cost of gathering that data and report under the IGA I or IGA II at little cost to the government must seem like an excellent idea.

The United States has historically been an excellent place for foreign nationals to hide money and it has been reported that more unreported income has been held in US banks than in any other jurisdiction in the world. Each country the US government is speaking to with regards to the IGAs, will welcome the financial information they will receive from the US government and the US in turn, is keen to find out more about where American citizens are hiding their unreported money.

Remember, there are over 6 million Americans living abroad and only 465,000 who actually file their tax returns, which leaves 5.5 million non-filing and non-tax compliant Americans. Although it is likely that many of these non-resident Americans will not owe taxes because of the tax credits they obtain for taxes paid to their host countries, IRS announced in June that over 35,000 people had come forward under the 2009 and 2011 Offshore Voluntary Disclosure Programs and that $5.5 billion in taxes and penalties had been paid by these delinquent taxpayers. This surely means that IRS is looking at these 5.5 million Americans who are not filing or reporting as a source of significant tax revenues, and surely that is enough to keep the FATCA train rolling forward.

You can download the full announcement from our blog.

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