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TAX

CLIENT PUBLICATION

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United States Signs FATCA Intergovernmental Agreement With the Cayman Islands

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The US Department of the Treasury recently announced that the United States has signed a "Model 1" intergovernmental agreement (an "IGA") with respect to the US Foreign Account Tax Compliance Act ("FATCA") with the Cayman Islands. Like the other IGAs the United States has signed, the Cayman Islands IGA is intended to streamline FATCA information reporting and reduce compliance burdens for financial institutions in the Cayman Islands.

Background

FATCA (contained in Sections 1471 through 1474 of the Internal Revenue Code) was enacted in 2010 in order to reduce perceived offshore tax evasion by US persons holding assets through offshore accounts that were not subject to US information reporting to the Internal Revenue Service (the "IRS"). FATCA generally requires a foreign payee that is a foreign financial institution (an "FFI") either (1) to enter into an agreement with the IRS relating to such reporting (an "FFI Agreement", and such an FFI, a "Participating FFI") or (2) to comply with local laws that implement an IGA. If an FFI does not satisfy these requirements (and is not otherwise exempt), withholdable payments made to such FFI will be subject to withholding under FATCA at a rate of 30%. FATCA information reporting and withholding requirements generally do not apply to FFIs that are treated as "deemed-compliant" because they present a relatively low risk of being used for tax evasion or are otherwise exempt from FATCA withholding.

The IGA Framework

IGAs allow foreign governments to implement FATCA in a manner that removes legal impediments to compliance in the relevant foreign country (e.g., bank secrecy laws) and that reduces compliance burdens on FFIs. The US Department of the Treasury has developed two alternative IGA models in collaboration with foreign governments: the Model 1 IGA and the Model 2 IGA.

FFIs located in Model 1 IGA countries (other than those not subject to reporting) generally are required to identify US accounts pursuant to due diligence rules adopted by the IGA partner country and to report specified information to the relevant governmental authority of the IGA partner country. This information will be automatically exchanged by the IGA partner country with the IRS. FFIs in Model 1 IGA countries are not required to enter into FFI Agreements with the IRS. In contrast, FFIs in Model 2 IGA countries (other than those not subject to reporting) are not relieved from the requirement to enter into an FFI Agreement to avoid FATCA withholding. A Model 1 IGA may be reciprocal or non- reciprocal. Under a reciprocal Model 1 IGA, US financial institutions generally are required to report specified information to the IGA partner country about accounts held by residents of the IGA partner country at US financial institutions.

Cayman Islands IGA

The IGA with the Cayman Islands is a non-reciprocal Model 1 IGA. Under the IGA, Cayman Islands FFIs will be required to provide certain information about their US account holders to the Cayman Islands Tax Information Authority, which will share that information with the IRS. A Cayman Islands FFI that complies with Cayman Islands due diligence and reporting requirements established in accordance with the Cayman Islands IGA will be eligible to be treated as a registered deemed-compliant FFI for FATCA purposes. In connection with signing the IGA, the United States and the Cayman Islands also signed a new Tax Information Exchange Agreement (a "TIEA") to replace the TIEA signed in 2001 and enable the information exchange required by the IGA. With the signing of the IGA, the Cayman Islands will now need to enact legislation or issue guidance to implement the reporting system contemplated under the IGA.

Other IGAs

The United States also recently signed reciprocal Model 1 IGAs with France and Costa Rica, and had previously signed Model 1 IGAs with Denmark, Germany, Ireland, Mexico, Norway, Spain and the United Kingdom. The United States has signed Model 2 IGAs with Japan and Switzerland. According to the US Department of the Treasury, the United States has reached agreements in substance with 16 additional jurisdictions and is engaged in FATCA-related discussions with many more jurisdictions. If you wish to receive information on another IGA, you may contact your regular Shearman & Sterling contact person or any contact person listed in this publication.

FFI Registration Process

Most FFIs in countries that have signed IGAs will still have to register with the IRS and obtain a global intermediary identification number (a "GIIN") to avoid FATCA withholding. The IRS online registration system is open for registration, and FFIs will be able to finalize their registrations beginning on January 1, 2014. As registrations are finalized and approved by the IRS, registering FFIs will receive notices of registration acceptance and will be issued GIINs.

Beginning in June 2014, the IRS intends to publish a monthly electronic "IRS FFI List" of Participating FFIs and registered deemed-compliant FFIs (including reporting FFIs in Model 1 IGA countries) to allow withholding agents to verify payees' GIINs. An FFI generally should finalize its registration with the IRS no later than April 25, 2014 to be included in the first IRS FFI List. However, FFIs in IGA countries will have additional time to register with the IRS and obtain GIINs as compared to FFIs located in non-IGA countries. For an FFI located in an IGA country, verification of a GIIN by a withholding agent (and, accordingly, FATCA withholding) will not be required for withholdable payments made prior to January 1, 2015 (rather than the generally applicable date of July 1, 2014).

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