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IRS Reconsidering FATCA Rules

There is good news for foreign financial institutions – the IRS is reconsidering the Foreign Account Tax Compliance Act (FATCA). The FATCA requires all financial institutions to declare details of their American clients to the IRS for tax purposes. If any financial institution does not comply with the FATCA regulations, they are liable to a 30% penalty withholding tax that will be levied on the gross proceeds of any US assets. But upon reviewing the regulation, it was brought up that such a requirement may contravene privacy laws.

The original FATCA rules received vehement protests from banks and other financial institutions abroad who say that the requirements would cost them billions of dollars to implement. Latest developments have the IRS narrowing the scope of the FATCA to only involve larger accounts and at the same time require financial institutions to only declare details of American clients in accordance with existing money laundering rules.

Last week representatives of the US government met with their European counterparts in Paris to iron out a mutual agreement where European banks would transfer data on US citizens to their respective national authorities who would then pass them on to the US government.

The FATCA came about because of a slew of tax evasion cases involving wealthy American taxpayers who used offshore bank accounts and other financial instruments to hide their assets overseas. In 2009, the much-publicized spat between the US and Swiss governments over the role of Swiss bank UBS in abetting tax evasion by their American clients culminated in the Swiss bank paying a hefty \$780 million fine to the IRS for their role in helping US taxpayers hide their taxable income in their bank accounts.

In addition, UBS had to surrender personal banking data on some 4,500 US clients suspected of tax evasion to the Swiss government who subsequently handed it over to the US government. Against this backdrop of events, the FATCA came into existence.

The original FATCA regulations were due to be enforced in January 2013 but in July 2011, the US Treasury and the IRS announced plans to defer the Foreign Account Tax Compliance Act reporting requirements by 12 months. As a result, the Treasury and the IRS has also come up with a phased timetable for firms to comply with the rules.