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CLIENT PUBLICATION

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United States and Brazil Sign FATCA Intergovernmental Agreement

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The United States and Brazil have signed a "Model 1" intergovernmental agreement ("IGA") with respect to the US Foreign Account Tax Compliance Act ("FATCA"). The Brazilian IGA is intended to simplify FATCA information reporting and reduce compliance burdens for Brazilian financial institutions.

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), certain payments made to the FFI may 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 Treasury Department 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 of 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.

The United States has entered into Model 1 IGAs with 38 countries and has entered into Model 2 IGAs with 5 countries. In addition, the United States has reached agreements in substance with more than 50 countries that may be treated (through the end of 2014) as having an IGA in effect. A complete list of all countries that have signed agreements or that have reached an agreement in substance is available at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx.

Brazilian IGA

The Brazilian IGA is a reciprocal Model 1 IGA. The Brazilian IGA was signed on September 23, 2014 (although Brazil had previously been designated as having reached an agreement in substance with the United States). Under the Brazilian IGA, Brazilian FFIs (*i.e.*, financial institutions that are resident in Brazil for tax purposes, even if organized outside of Brazil) will be required to provide certain information about their US account holders to the Receita Federal Brasileira, which will share that information with the IRS. The United States, in turn, will share similar information with the Receita Federal Brasileira regarding accounts held by Brazilian residents with certain US financial institutions. A Brazilian FFI that complies with due diligence and reporting requirements established in accordance with the Brazilian IGA will be eligible to be treated as a registered deemed-compliant FFI for FATCA purposes. With the signing of the Brazilian IGA, Brazil now will need to enact legislation or issue guidance in the upcoming months to implement the reporting system contemplated under the Brazilian IGA. The Brazilian IGA is available at http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Brazil-9-23-2014.pdf.

If you wish to receive further information on the Brazilian IGA, or any other aspect of FATCA, you may contact your regular Shearman & Sterling contact person or any contact person listed in this publication.

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