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Switzerland
Financial Services

FAHTCA*weekly*
Your snapshot of the week

Issue number 66
6 February 2014

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The View from Deloitte

Dear Reader,

After a lull in the middle of 2013, the United States Treasury recently announced successful consummations of multiple FATCA intergovernmental agreements (IGAs), the bilateral accords that embed FATCA's rules in the domestic legal sphere and eliminate local law conflicts for entities complying with FATCA. Agreements announced over the past few weeks raised the total of announced IGAs to over twenty and the range of IGA jurisdictions now includes most European financial centers and many of the Caribbean ones as well.

Despite the flurry of IGAs, numerous countries remain without one, including both crucial constituents of the world financial system, such as Australia, Hong Kong, Luxembourg and Singapore, and sizable economic powers, such as India, Russia and South Korea. Undoubtedly though, the sharpest interest concerns the likelihood of an IGA with China.

Due to its phenomenal growth over the past two decades and its latent potential for growth in a variety of financial services, major global financial institutions have devoted inordinate attention to the Chinese market in the past decade and thus have a significant financial stake in its on-going integration into the global financial system of which FATCA is now a key variable. Additionally, China is one of the few countries able to exert counter-leverage towards the U.S. negotiators based on the enormous quantities of U.S. Treasury debt held by the country and its banks. Therefore, keen interest surrounds the progress of negotiations. Informal reports continue to indicate that an IGA is forthcoming, albeit not when, but the details of the text remain murky.

A recent disclosure of assets held in off-shore companies is an emerging factor that may influence these negotiations. On 21 January, a consortium of newspapers and non-governmental groups released a report, alleging ownership stakes in companies held by close relatives of the Chinese Communist Party (CCP) leadership. This report appears in the middle of a concerted campaign to eliminate the appearance of corruption in the middle and upper echelons of the CCP, involving the active pursuit of several high-profile graft investigations and a ban on the ostentatious banqueting and gift-giving that previously formed an integral part of career-building for Party members. As a consequence of the crackdown, sensitivities towards allegations of vast sums of wealth held abroad by close relatives of political leaders are acute. However, with FATCA on the horizon the problem cannot be ignored or eradicated.

The off-shore financial centers where the investment vehicles are incorporated and the assets are held have, or are expected to have, IGAs with the U.S. Most of these countries entered into Model 1 IGAs in which the local authorities intermediate between their domestic financial institutions and the IRS. Nonetheless, even Model 1 IGAs compel the intermediating local authorities to pass on the information regarding reportable U.S. account holders on an automatic basis. Herein lies the problem. Many relatives of the Chinese political and business leadership send their children to the U.S. to study or accrue work experience; some also obtain Green Cards. Should any of these children be connected to the companies or other structures set up in the Model 1 IGA jurisdictions, those accounts may become reportable and that information reach the IRS. In light of the current tension between the corruption crackdown and the allegation by the media consortium, the Chinese leadership may be facing a scenario in which politically damaging information is being passed over to the tax authority of its geo-political rival. Worse from its perspective, the leadership may have few means of limiting or even monitoring the transfer of the information because all the companies doing the reporting and the assets themselves are outside of China's control.

Unable to block the mechanisms of FATCA, therefore, the Chinese leadership seems inclined to a cooperative course and is reportedly negotiating a reciprocal Model 1 IGA with the U.S. that would oblige U.S. financial institutions to disclose bank information on Chinese persons holding accounts by them. If reciprocity is in fact the outcome of the IGA negotiations, the Chinese political elite may be acknowledging implicitly that, to the extent other countries must learn about the account holdings of Chinese citizens, China ought to as well.

Regards,

Paul Millen

FATCA Project Leader, Switzerland

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News Switzerland

U.S. Justice Department Satisfied with Participation in U.S. Programme

On 25 January, the assistant attorney general for the Justice Department's Tax Division, Kathryn Keneally, announced that over one-third of the estimated 300 banks in Switzerland had submitted letters of intent to participate in the U.S. Programme as so-called Category 2 banks, in an effort to fend off investigatory pressure from the U.S. government. In exchange for information on U.S Persons who concealed taxable assets at the bank and the mechanisms by which the bank aided the concealment efforts, along with payment of anticipated fines, a cooperative bank will receive a non-prosecution agreement. Oddly, according to Ms. Keneally's presentation at the American Bar Association conference, not all the Swiss financial institutions submitting applications were banks and those that are not banks are ineligible for participation in the Programme. Overall, the Justice Department indicated satisfaction with the response of the Swiss financial industry. **Your Deloitte contact: David Fidan**

News Europe

Leading Trusts Association in UK Issues FATCA Guidance

The Society of Trust and Estate Practitioners (STEP), a prominent professional group for the trust industry, released FATCA guidance for the compliance of trusts subject to the UK intergovernmental agreement (IGA) and based on the draft HMRC guidance notes issued 14 August 2013. The STEP guidance sets out:

- That all trusts must determine compliance responsibility under FATCA;
- Under which circumstances a trust will qualify as an FFI;
- The registration consequences stemming from FFI or NFFE classification; and
- Other salient topics.

According to media reports, the impetus for the publication, despite the recognition that further amendments to the Treasury Regulations and the HMRC guidance notes are forthcoming, was the need to correct the widespread misconception in the UK wealth management industry that trusts were exempt from FATCA compliance responsibilities. **Your Deloitte contact: Brandi Caruso**

News U.S.

Republican National Committee Resolves to Repeal FATCA

On 24 January, the Republican National Committee (RNC), the formal institutional wing of the Republican Party, called for the abolition of FATCA, endorsing by acclaim a resolution to Congress formally requesting the law's repeal. As any effort at repeal will expire in the Democrat-controlled Senate (or, if not, incur a veto from the President), the resolution will not effect a FATCA policy change. Instead, perhaps, the Republicans hope to capitalize on complications and/or further delays to portray the Obama administration as inept in the implementation of the legislation it enacts, aligning the critique of FATCA with that of Obamacare. It is unclear whether such critique from the Republicans would acknowledge the delays to FATCA's preparation generated by the U.S federal government shutdown last November. **Your Deloitte contact: Paul Millen**

News International

Canada and More European Countries Announce IGAs or Negotiations

The number of intergovernmental agreements (IGAs) continues to grow. On 5 February, the Treasury Department announced the long-anticipated Model 1 IGA with Canada. Additionally, the following European countries progressed towards IGAs of their own:

- On 23 January Estonia approved for signature a draft IGA;
- On 28 January Slovenia initialed an IGA; and
- On 5 February the signing of the IGA with Hungary was announced.

All three European countries also opted for Model 1 IGAs, adopting an approach similar to their fellow EU member states. Of likely more significance, Russia reportedly held IGA negotiation talks with the U.S. in Paris on 3 February. The absence of a Russian IGA constitutes a serious concern due to the presence of so-called blocking statutes that would prevent Russian financial institutions from complying with FATCA without an IGA. **Your Deloitte contact: Markus Weber**

Reason for the Spelling of our Title

The unusual spelling of our title indicates that the newsletter covers more than FATCA, encompassing all the current and upcoming issues concerning **F**oreign **A**ccount **H**olders by condensing key developments in all pertinent tax and regulatory matters into a compact, up-to-date and easily accessible digest of critical information.

FATCA-in-a-Box for Trusts is Here

FATCA-in-a-Box for Trusts merges the tax knowledge of Deloitte's FATCA specialists and the expertise of a major Swiss Trust Company with software technology to deliver a unique FATCA compliance product for the Trust industry. Deploying interpretations and methodologies developed with external Swiss trust experts over the past year, FATCA-in-a-Box reduces the compliance process for trust administrators to a series of simple steps. For more information, please visit the Deloitte **FATCA-in-a-Box webpage** or contact **Brandi Caruso, Paul Millen** or **Kaitlin Barbier** directly**.**

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