

Global IRW Newsbrief

Information reporting and withholding (IRW)

June 29, 2012

Treasury issues separate joint statements with Japan and Switzerland to facilitate the implementation of FATCA

On February 8, 2012, a Joint Statement was released by the governments of the United States (U.S.), France, Germany, Italy, Spain and the United Kingdom stating that they are exploring a common approach to implementing the provisions contained under the Foreign Account Tax Compliance Act ("FATCA") of 2009, which was enacted as part of the Hiring Incentives to Restore Employment Act of 2010. The intergovernmental approach outlined in the joint statement was based on domestic reporting and reciprocal automatic information exchange based on existing bilateral tax treaties. Since the issuance of the February joint statement, a number of foreign governments have expressed both publically and privately their intention to enter into similar types of agreements with the U.S.

On June 21, 2012, the governments of [Japan](#) and [Switzerland](#) each released a joint statement with the U.S. government regarding their intention to explore and negotiate an intergovernmental agreement ("IGA") to facilitate the implementation of the FATCA. These statements with Japan and Switzerland are the first since the joint statement from February 2012 and contain the same broad principles, especially in the area of income tax withholding. However, there are significant differences between the three joint statements on matters related to tax information reporting, registration requirements with the IRS, account due diligence and information exchange.

***PwC Observation:** The joint statements do not constitute an official agreement between the countries or represent the model agreement, but they provide some directional guidance as to how the countries are working on developing a cooperative framework that will allow for the implementation of FATCA and the exchange of information to improve tax compliance.*

Reporting

The February statement allows reporting by financial institutions in each of the jurisdictions directly to their respective local government followed by the automatic exchange of information with the United States. Both statements with Japan and Switzerland indicate that financial institutions in each jurisdiction will be required to report directly to the IRS and not to their respective governments. Moreover, the Swiss government would agree to grant an exception from certain criminal sanctions in order to allow Swiss financial institutions to comply with the reporting requirements. The reporting will be required in a manner consistent with the FATCA requirements and supplemented by the exchange of additional information upon request.

PwC Observation: *Recently a senior Treasury official indicated there are three reporting approaches to FATCA compliance: (1) direct reporting to the IRS, (2) government to government information sharing approach, and (3) direct reporting to the IRS under an IGA framework. More guidance is necessary for foreign financial institutions to determine which model would apply to them in order to implement the systems necessary to comply with FATCA.*

Registration

The February statement also suggested a willingness by the U.S. government to eliminate the obligation of each financial institution located in one of the five non U.S. jurisdictions to enter into a direct agreement with the IRS, as long as each financial institution registered with the IRS or was excepted from registration. The joint statement with Japan seems to adopt this provision in its entirety. Specifically, the Japanese Authorities would direct and enable financial institutions in Japan to register with the IRS and confirm their intention to comply with official guidance to be issued by the Financial Services Agency (“FSA”) in Japan that will be consistent with the due diligence and reporting obligations of participating FFIs (“PFFIs”) under the FATCA regulations. However, the Switzerland statement departs from this approach and indicates that Swiss financial institutions that are not deemed compliant will be required to enter into an agreement directly with the IRS.

PwC Observation: *Additional information on the registration process was recently provided by the IRS and can be found at <http://www.irs.gov/businesses/small/international/article/0,,id=258313,00.html>*

Tax Withholding

The February statement and the joint statements with Switzerland and Japan broadly indicate a willingness by the U.S. to eliminate withholding under FATCA on payments to financial institutions in each country that has entered into an IGA. Additionally, financial institutions within IGA countries would not be required to withhold on foreign passthru payments to recalcitrant accounts or foreign financial institutions in other IGA countries.

The U.S.-Japan joint statement provides that U.S. withholding under FATCA would be eliminated on payments to financial institutions in Japan that have registered with the IRS or that are excepted from registration. In contrast, the U.S.-Switzerland statement would eliminate U.S. withholding under FATCA on payments to Swiss financial institutions that are PFFIs or deemed compliant foreign financial institutions.

Also, under both statements, the United States would agree to identify specific categories of financial institutions in Japan and Switzerland that would be treated as deemed compliant or exempt due to presenting a low risk of U.S. tax evasion. With respect to withholding obligations related to recalcitrant account holders, under both statements, a financial institution that complies with its obligations would not be required to terminate recalcitrant accounts or impose foreign passthru payment withholding on payments to recalcitrant account holders.

Due diligence standards

FATCA imposes certain due diligence requirements on foreign financial institutions. The February statement and both statements with Japan and Switzerland provide that financial institutions will be required to follow the due diligence rules prescribed under FATCA to identify U.S. accounts. However, each statement implies that the governments will work together to reduce burden while still achieving the objectives of FATCA.

Information Exchange

Information exchange is only addressed in the joint statements with respect to recalcitrant accounts. Both Japan and Switzerland indicated that they would agree to accept and comply with requests made by the U.S. competent authority for additional information about accounts identified as recalcitrant accounts. However, there is no mention regarding the U.S. commitment to reciprocate in collecting and exchanging information on accounts held in U.S. financial institutions by residents of Japan or Switzerland as was indicated with respect to residents of France, Germany, Italy, Spain and the United Kingdom.

PwC Observation: *Although the joint statement between the United States and Japan indicates that their agreement to explore a framework for intergovernmental cooperation to facilitate the implementation of FATCA is based on the existing bilateral tax treaty between the U.S. and Japan. IRS officials have indicated that the FATCA intergovernmental agreements are Executive Agreements and not a treaty. A treaty would require the advice and consent of the U.S. Senate to implement.*

For more information about FATCA, please visit our web site at <http://www.pwc.com/us/fatca>.

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Solicitation.

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