



# Current Trends in International Reporting and Exchange of Information

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# Current Trends in International Reporting and Exchange of Information

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## Background

- For the last three years, the U.S. government has made substantial and aggressive efforts against: (i) U.S. taxpayers who have undeclared funds in foreign accounts, and (ii) foreign banks and bankers, tax and financial advisors which have facilitated such taxpayers.
- The protection granted by the legal principle of “bank secrecy” in foreign legislations (particularly, Switzerland) has been partially overridden.



# Background

- Qualified Intermediary Program (“*Qualified Intermediaries*” or QI) – Last decade’s experience
  - Problem: Certify an intermediary (e.g. RBS, Barclays, UBS) as a “conduit” (W-8IMY) and each “beneficial owner” as a foreign non resident (W-8BEN).
  - Program: A foreign intermediary entered into an agreement with the IRS and assumed the responsibility to verify and certify the status of foreign investors.
  - The QI Program did not normally require giving the IRS information concerning the names of foreign investors or U.S. source income.
  - IRS/Treasury Experience – Some Banks cheated the system (e.g., UBS)

## Background

- In 2009, leaders of the G20 countries declared that for tax purposes “[t]he era of banking secrecy is over,” and stated that they “stand ready to use countermeasures” against jurisdictions that do not conform to international standards for tax information exchange. The Group of Twenty, *Declaration on Strengthening the Financial System*, G-20 (Apr. 2, 2009)

# FATCA

- ❖ The *Foreign Account Tax Compliance Act* (“FATCA”) was enacted on March 18<sup>th</sup> 2010, and includes new rules regarding the compliance of informing by foreign banks to the I.R.S. of U.S. account holders outside the U.S.
- ❖ Enacted as part of the HIRE (*Hiring Incentives to Restore Employment*) Act, which purpose was to stimulate U.S. economic recovery by employment incentives.
- ❖ FATCA introduces a new chapter 4 to subtitle A of the IRC, and will come into effect on January 1<sup>st</sup>, 2013.
- ❖ Estimated tax revenues of USD \$8.7B from FATCA is expected in the following ten years (e.g., \$870M per year).

# FATCA

- **Procedure:** Foreign Financial Institutions enter into an agreement with the U.S. Treasury to provide information on their clients , US taxpayers, and in some cases to withhold taxes.
- **Problems:** In accordance with the domestic law of a lot of countries (including Mexico), financial institutions are prevented to provide information on their clients to foreign governments (U.S.)
- **Solution:** Help of Foreign Countries to compile information of its financial system and subsequent delivery to the U.S. through agreement with “FATCA Partners”.
  - Agreements based on **reciprocity** and to intensify their cooperation to **fight International Tax Evasion**
  - Joint declaration U.S., France, Germany, Italy, Spain and the U.K. (2/2012)
  - Joint declaration with Switzerland and Japan ( 6/2012)

# FATCA

## **FATCA's two main purposes:**

- a) Tax payment by U.S. persons who have foreign bank accounts, either directly or through a legal entity.
  
- b) Obtain information regarding capital flow and income received by U.S. persons via a foreign financial entity (broadly defined).

# FATCA – Newly Published Forms

- W-8BEN-E "Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)", published in June by the IRS.
- W-8BEN "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual)" published in June by the IRS.
- W-8IMY "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding", published in August by the IRS.



# Reciprocity: Treasury Regulations Section 1.6049-8

- Tax Exemption in the US for interests for non regulated entities from 192.
- Proposed Regulations published in January 2011 (previously in 2001 and changed in 2002 leaving Canada)
- Final Regulations (Modified) published in April 2012
  - Applicable to income of residents of 78 countries (including Mexico and Canada) that have tax agreements with the U.S. with exchange of information – Rev. Proc. 2012-24
  - “Justified” in FATCA / Reciprocity. These regulations are **not part of FATCA!**
  - Who is the owner of the income? Concept of “**Beneficial Owner**”
    - The Country of Residence is determined based on Form W-8BEN
    - Important if it is a legal entity it determines if it is a fiscally transparent entity (domestic U.S. rules) or not.

# Reciprocity: Treasury Regulations Section 1.6049-8

- Information on: a) interests +than 10 USD, b) paid by bank deposits (also some saving institutions, and loan companies and insurances companies), and c) foreign individuals.
- Financial Institution has the obligation to inform the IRS and NOT the IRS to inform the countries of the treaty.
- It is NOT an automatic exchange of information with the other 77 countries different from Canada.
- Starts with payments made after 2012.
- Does NOT affect the regimen of withholding exemptions.



# Current Trends:

## Mexico: Convention on Mutual Administrative Assistance in Tax Matters – OCDE / (Strasbourg Convention 1998, modified with 2010 Protocol)

- Provides that “the bank secret and the requisite of internal fiscal interest, does not prevent the exchange of information for tax purposes and opens the possibility that countries that are not part of the European Council nor of the OCDE be part of the Convention” (*Report of the United Commission of the Exterior Relations International Organisms and Treasury and Senate’s Public Credit*)
  - Includes:
    - *Exchange of Information*, including simultaneous audits and participation in audits abroad
      - Previous Request (Article 5)
      - Automatic (Article 6)
      - Spontaneous (Article 7) Very broad!
    - *Assistance in Collection*, including provisional remedies
    - *Notifications*
  - The U.S. has not deposited an instrument of ratification for the Protocol but they did for the Original Convention

**STATUS OF THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AND AMENDING PROTOCOL – 25 MAY 2012**

COUNTRY	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE	SIGNATURE (Opened on 27-05-2010)	DEPOSIT OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE
ARGENTINA				03-11-2011 (AC)		
AUSTRALIA				03-11-2011 (AC)		
AZERBAIJAN	26-03-2003	03-06-2004	01-10-2004			
BELGIUM	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)		
BRAZIL				03-11-2011 (AC)		
CANADA	28-04-2004			03-11-2011 (P)		
COLOMBIA				23-05-2012 (AC)		
COSTA RICA				01-03-2012 (AC)		
DENMARK	16-07-1992	16-07-1992	01-04-1993	27-05-2010 (P)	28-01-2011	01-06-2011
FINLAND	11-12-1989	13-12-1994	01-04-1993	27-05-2010 (P)	21-12-2010	01-06-2011
FRANCE	17-09-2003	23-03-2003	01-09-2003	27-05-2010 (P)	13-12-2011	01-04-2012
GEORGIA	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
GERMANY	17-04-2008			03-11-2011 (P)		
GREECE	21-02-2012			21-02-2012 (P)		
ICELAND	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
INDIA				26-01-2012 (AC)	21-02-2012	01-06-2012
INDONESIA				03-11-2011 (AC)		
IRELAND				30-06-2011 (AC)		
ITALY	31-01-2006	31-01-2006	01-03-2006	27-05-2010 (P)	17-01-2012	01-03-2012
JAPAN	03-11-2011			03-11-2011 (P)		
KOREA	27-03-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
MEXICO	27-03-2010			27-05-2010 (P)	23-03-2012	01-09-2012
MOLDOVA	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
NETHERLANDS	23-09-1990	13-10-1996	01-02-1997	27-05-2010 (P)		
NORWAY	03-03-1989	13-06-1989	01-04-1993	27-05-2010 (P)	18-02-2011	01-06-2011
POLAND	19-03-1996	23-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
PORTUGAL	27-03-2010			27-05-2010 (P)		
RUSSIA				03-11-2011 (AC)		
SLOVENIA	27-05-2010	31-01-2011	01-03-2011	27-05-2010 (P)	31-01-2011	01-06-2011
SOUTH AFRICA				03-11-2011 (AC)		
SPAIN	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)		
SWEDEN	20-04-1989	04-07-1990	01-04-1993	27-05-2010 (P)	27-03-2011	01-09-2011
TURKEY				03-11-2011 (AC)		
UKRAINE	30-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)		
UNITED KINGDOM	24-03-2007	24-01-2008	01-03-2008	27-05-2010 (P)	30-06-2011	01-10-2011
UNITED STATES	28-06-1989	30-01-1991	01-04-1993	27-05-2010 (P)		



# Current Trends:

## Mexico: Convention on Mutual Administrative Assistance in Tax Matters – OCDE / (Strasbourg Convention 1998, modified with 2010 Protocol)

- In accordance with the Decrees published in the Mexican Official Daily Gazette on 27/08/2012 (and which will come into effect on September 2012), Mexico will be able to broadly exchange information regarding its taxpayers with other countries, while protecting private/confidential information, and regulating the flow of personal data.
- Mexico has modified the previous Convention on Mutual Administrative Assistance in Tax Matters following a new international “cooperation environment” and in order for Mexico to allow other states to enjoy the privileges of this new cooperation environment and at the same time be able to enforce the highest international standards of cooperation with regard to the exchange of tax information.

# Current Trends

## Global Forum on Transparency and Exchange of Information for Tax Purposes

- Currently, the OECD Model Tax Convention only requires information exchange upon request, while allowing for but not requiring automatic exchange of information.
- In 2012, the Global Forum on Transparency and Exchange of Information for Tax Purposes reported a “high level of cooperation among members” and informed that it had made a “steady progress towards its goal of increased transparency” among its members. (Progress Report to the G20, Los Cabos, Mexico June 2012).

## Current Trends

- A cross-party committee of Members of the British Parliament has called on the government to introduce U.S.-style automatic disclosure of information on UK citizens by foreign institutions and tax authorities to help stem global cross-border tax evasion (*Reuters* 23/08/2012).
- The proposed legislation takes FATCA as inspiration.



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