

United States – Canada FATCA Intergovernmental Agreement released

February 2014

Tax Bulletin

International Taxation Chronicle

The long-anticipated United States – Canada Intergovernmental agreement (IGA) was released on February 5, 2014.

The Foreign Account Tax Compliance Act (FATCA), enacted by the US Congress in 2010, requires foreign financial institutions to use certain due diligence procedures to identify US persons who have invested in either non-US financial accounts or non-US entities. The intent behind FATCA is to keep US persons from hiding income and assets overseas, as US persons are required to report to the Internal Revenue Service (IRS) on their worldwide income regardless of their residency. FATCA will start to become operational on July 1, 2014. The US Treasury has entered into intergovernmental agreements with many countries in order to alleviate some of the burdens associated with FATCA compliance.

Canadian financial institutions (FIs) now have the final guidance on how FATCA will apply, and all impacted institutions should proceed with the necessary steps to implement and be compliant with FATCA.

Canadian FATCA IGA highlights

Canadian FIs that are not exempt from FATCA do not need to enter into an agreement with the IRS. However, non-exempt Canadian FIs are still required to register on the IRS FATCA portal and receive a Global Intermediary Identification Number (GIIN).

As anticipated, the IGA provided an exemption from FATCA reporting for the following accounts:

- Registered Retirement Savings Plans (RRSPs);

- Registered Retirement Income Funds (RRIFs);
- Pooled Registered Pension Plans (PRPPs);
- Registered Pension Plans (RPPs);
- Tax-Free Savings Accounts (TFSA);
- Registered Disability Savings Plans (RDSPs);
- Registered Education Savings Plans (RESPs);
- Deferred Profit Sharing Plans (DPSPs);
- Eligible funeral arrangements;
- Certain escrow accounts; and
- An account maintained in Canada and excluded from the definition of financial account under an agreement between the United States and another partner jurisdiction to facilitate the implementation of FATCA.

Deemed-compliant financial institutions

The following Canadian FIs will be considered non-reporting Canadian financial institutions that will be treated as deemed-compliant foreign financial institutions (FFIs):

- A financial institution with a local client base;
- A local bank;
- A financial institution with only low-value accounts;
- A sponsored investment entity and controlled foreign corporation;

- A sponsored, closely-held investment vehicle;
- A restricted fund;
- A labour-sponsored venture capital corporation;
- Any central cooperative credit society whose accounts are maintained for member financial institutions;
- Any entity described in Article XXI (Exempt Organizations) of the Canada-US income tax treaty; and
- An investment entity established in Canada that is regulated as a collective investment vehicle (subject to certain conditions).

The IGA provides for phased-in reporting of the required information on each US account holder.

- With respect to 2014, Canadian FIs will need to report the name, address, and US Taxpayer Identifying Number (TIN) of each US person that is an account holder;
- With respect to 2015 and 2016, Canadian FIs will need to report the name, address, US TIN, the account balance, gross amount of interest and dividends credited to an account of each US person that is an account holder. Gross proceeds from the sale or redemption of property credited to an account will be required starting in 2016 reporting;
- For 2017 and onwards all the above information will need to be collected and consolidated by Canadian FIs for reporting to the Canada Revenue Agency (CRA).

Next steps for Canadian FIs

- 1 FATCA classification: each Canadian FI needs to determine its classification under FATCA. This will determine whether registration is required.
- 2 IRS registration: Canadian FIs that are not exempt should register no later than April 25, 2014 on the IRS online portal and obtain a GIIN. This deadline is critical as the IRS will publish its first list of registered FFIs by June 2, 2014 (and will update this list on a monthly basis thereafter).
- 3 FATCA withholding will start on US source income—such as dividends, interest—paid starting July 1, 2014. US withholding agents will confirm a Canadian FI's status as being onside with FATCA by reviewing the IRS published list.

Canadian FIs that are required to register with the IRS and do not do so by April 25, 2014 will be subject to the 30% FATCA withholding tax.

- 4 New client on-boarding procedures must be in place for all new accounts opened on or after July 1, 2014. Canadian FIs will need to change their new account procedures to determine the US status of new clients. Canadian FIs can adopt the self-certification/documentary evidence approach in verifying whether the account holder is US citizen or US resident for tax purposes.

Later steps

As the FATCA implementation is phased in over the next few years, Canadian FIs will need to consider how to report the information on their US account holders they are required to report to the CRA. This reporting will commence in 2015.

Canadian FIs will also need to commence a due diligence process on their pre-existing accounts (accounts maintained as of June 30, 2014) to determine which of their current clients are US persons.

The challenge

With time being the biggest constraint, Canadian FIs with reporting obligations must consider how FATCA's requirements impact their internal systems. FIs should note that they may require sophisticated IT systems or will have to configure their current IT systems to allow for the required information gathering and reporting.

Your Raymond Chabot Grant Thornton consultant can help you. Please do not hesitate to contact us.

Visit our web site rcgt.com for more information.