Innovations in the War on Tax Evasion: Automatic Exchange of Information

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Global Problems Require Global Solutions

- **Unilateral Approach in 2010**
  - U.S. takes unilateral approach under the Foreign Account Tax Compliance Act (FATCA)

- **Multilateral Response in 2012**
  - Feb. 8: Treasury Dept. issued joint statement to announce the negotiation of agreements with UK, France, Germany, Italy & Spain
  - July 26: Treasury released model framework (Treasury Model I)
  - Financial institutions to provide information to their own governments
  - with reciprocal automatic information exchange between governments
  - known as FATCA Intergovernmental Agreement (IGA)
  - Sept. 14: U.S. and U.K. signed the first bilateral FACTA agreement (IGA)
There are currently IGAs or agreements in substance with all Member States except Greece, which has announced its intention to sign a FATCA IGA.
What is FATCA?

- U.S. Response to War on Tax Evasion
- Requires Taxpayer Reporting
  - Form 8938 used to report total value of all specified foreign financial assets
  - Includes foreign stock or securities not held in a financial account as well as investment vehicles such as foreign hedge funds & foreign private equity funds
- Failure to Report = Penalty
  - $10,000 (and a penalty up to $50,000 for continued failure after IRS notification)

## Statement of Specified Foreign Financial Assets

If you have attached additional sheets, check here □

Name(s) shown on return

Identifying number

Number, street, and room or suite no. (if a P.O. box, see instructions)

City or town, province or state, and country (including postal code)

<table>
<thead>
<tr>
<th>Tax year beginning</th>
<th>20</th>
<th>and ending</th>
<th>20</th>
</tr>
</thead>
</table>

**Note.** All information must be in English. Show all amounts in U.S. dollars. Show currency conversion rates in Part I, line 6(2), or Part II, line 6(2).

### Part I  Foreign Deposit and Custodial Accounts (see instructions)

If you have more than one account to report, attach a continuation sheet with the same information for each additional account (see instructions).

<table>
<thead>
<tr>
<th>1 Type of account</th>
<th>☐ Deposit</th>
<th>☐ Custodial</th>
<th>2 Account number or other designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Check all that apply</td>
<td>☐</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Maximum value of account during tax year</td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>5 Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars?</td>
<td>☐</td>
<td>Yes</td>
<td>☐ No</td>
</tr>
<tr>
<td>6 If you answered “Yes” to line 5, complete all that apply.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>7 Name of financial institution in which account is maintained</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>8 Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 City or town, province or state, and country (including postal code)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Part II  Other Foreign Assets (see instructions)

**Note.** If you reported specified foreign financial assets on Forms 3520, 3520-A, 5471, 8621, or 8865, you do not have to include the assets on Form 8938. You must complete Part IV. See instructions.
Intergovernmental Approach-Treasury Model I

- Uniform Model Agreement for government-to-government information sharing
  - Allows FFIs to report required FATCA information to their own governments which would then transmit data to IRS
  - Eliminates separate agreement between IRS and an FFI
- U.S. and U.K. entered into first bilateral FACTA agreement in September 2012

Alternative Approach-Treasury Model II

- Alternative framework for implementing FACTA with Austria with direct reporting by their FFIs to IRS
Ramifications

- **Shift** from FATCA’s *unilateral* arrangement to *reciprocal* relationship

  “In this regard the United States is willing to reciprocate in collecting and exchanging on an automatic basis information on accounts held in U.S. financial institutions by residents of France, Germany, Italy, Spain, and the United Kingdom.”

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1Press Release, U.S. Dep’t of Treasury, Joint Statement from the United States, France, Germany, Italy, Spain and the United Kingdom Regarding an Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA (February 8, 2012).
European Union Initiatives
Ease of capital movements led to a need for a minimum level of taxation on interest income.

Goal of EUSD is to effectively tax beneficial owners of interest payments made to them from another member state according to their state of residence.

Accomplished through automatic exchange of information.
Banking Havens

- Luxembourg and Austria
  - Instead of exchanging information, chose to levy withholding taxes during transitional period

- Argument of a competitive disadvantage unless other jurisdictions like United States and Switzerland also agree to automatic exchange of information
Amendments to the EUSD

- European Commission proposed amendments to EUSD to close loopholes and ameliorate tax evasion
- Amendments designed to ensure taxation of interest payments made through tax-exempt intermediaries
- Address deficiencies in definitions of interest, paying agent, and beneficial owner

- March 24, 2014, the EU Council approved the directive amending the savings directive
Administrative Cooperation

  - Information must be provided by Member States even where not needed for their own tax purposes
  - Information can be used in judicial and administrative proceedings
- Extension of mandatory automatic exchange of information (effective 2015) to income from employment, director’s fees, certain life insurance products, pensions etc.
- Possible extension to dividends, capital gains, other financial income and account balances proposed on June 12, 2013 by Commission
Future Questions?

- Most-favored-nation clause
  - No Member State can refuse to extend wider cooperation agreements with third countries to other Member States

- How will the FATCA agreements with respective Member States affect cooperation between them
Proposal amending DAC

- “Expanded AEOI on the basis of an EU-wide legislative instrument would remove the need and incentive for Member States to invoke Article 19 of the DAC…”
“It’s obnoxious, expensive, arrogant, extraterritorial, and likely to cause a fair amount of collateral damage while occasionally hitting its targets.” – Lee A. Sheppard

...Or a Snowball