



US  TAX

& FINANCIAL SERVICES

**TRANSPARENCY –
THE USA AND THEIR
ABILITY TO
TRANSFER DATA**

**2017 CIFA
CONFERENCE**

YOUR PRESENTER

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AGENDA

1. Data Collection – IRS - FATCA
 - Banks/Brokerage Accounts
 - Trust Companies
 - Partnerships
2. FinCen
3. Foreign Individuals
4. Foreign Entities
5. Risks for Professionals who relocated client's undeclared assets to the USA
6. The end of hiding foreign assets in Delaware/Nevada LLC's ?
7. Lessons from the latest OECD Peer Review report on USA

DATA COLLECTION - IRS

FATCA – MODEL 1 INTERGOVERNMENTAL AGREEMENTS (IGA 1a) and (IGA 1b)

- Partner jurisdiction agrees to report to the IRS specific information about the US Accounts maintained by all relevant FFIs located in that jurisdiction
- FFIs identify US accounts pursuant to due diligence rules contained in Annex 1 of the relevant IGA
- FFIs report specified information about their US accounts to the partner jurisdiction
- The Partner Jurisdiction, in turn reports such information to the IRS on an automatic basis
- The exchange of information under Model 1a IGA is reciprocal, Model 1b is NOT reciprocal.

DATA COLLECTION – IGA 1 99 COUNTRIES

- Data Safeguarding – Jurisdictions signing a reciprocal Model 1a IGA with the USA will be asked to complete an **International Data Safeguards & Infrastructure Workbook**. The information in this workbook will facilitate the evaluation of safeguards and provisions regarding confidentiality, use and infrastructure effectiveness prior to exchanging information.
- If the US deems the partner jurisdiction to have adequate safeguards in place, they will exchange account information from its financial institutions with respect to partner jurisdiction's residents and transmits the information to the partner jurisdiction. 43 countries have IGA 1a agreements.
- Model 1b IGAs do not have a reciprocal exchange of information agreement.

DATA COLLECTION – IGA 2 14 COUNTRIES

- The partner jurisdiction agrees to direct and enable FFIs located in the jurisdiction to report specified information about their US accounts directly to the IRS
- FFIs identify US accounts pursuant to due diligence rules contained in Annex 1 of the IGA
- FFIs report specified information about their US accounts to the IRS
- FFIs report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported on the basis of which the IRS may make a ‘group request’ to the partner jurisdiction for more specific information

INTERNATIONAL DATA SAFEGUARDS & INFRASTRUCTURE WORKBOOK

Article 3(8) of the Model 1A(reciprocal IGA) contemplates that the jurisdictions will exchange information once they are satisfied that the other jurisdiction has in place:

- (i) **appropriate safeguards** to ensure that the information received remains confidential and is used solely for tax purposes
- (ii) **the infrastructure for an effective exchange relationship**
 - established processes for timely, accurate and confidential information exchanges;
 - effective and reliable communications; and
 - demonstrates capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges.

ORGANIZATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT (OECD) – CRS

- May 6, 2014 - 47 countries tentatively agreed on a Common Reporting Standard(CRS). Agreement to automatically share info on residents assets and income
- July 12, 2015 - 53 countries signed agreement to automatically exchange info based on Article 6 of the Convention on Mutual Adm Assistance in Tax Matters
- Start Reporting in 2017 – Anguilla, Argentina, Barbados, Belgium, Bermuda, BVI, Bulgaria, Cayman Islands, Colombia, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, san Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks & Caicos, UK
- Others start reporting 2018 – Switzerland starts in 2018

PUBLICATION 515 – WITHHOLDING OF US TAX ON NONRESIDENT ALIENS AND FOREIGN ENTITIES – DATA IRS HAS ON FILE

- Nonresident Aliens
- Foreign Corporations
- Foreign Partnerships
- Foreign Trusts and Estates
- Foreign Governments
- International Organization
- Form 1042, 1042 S and 1042 T– Foreign Person – US Source Income Subject to Withholding – Updated for FATCA purposes in 2014
- Form 1099 – Withholding & Reporting obligations
- Information on LLC’s as of 1/1/2017

FINCEN – FINANCIAL CRIMES ENFORCEMENT ACT

- Established in April 1990 by Treasury Order 105-08.
- Original Mission - provide US Gov w/ wide multi-source intelligence and analytical network to support the detection, investigations and prosecution of domestic and international money laundering & other financial crimes.
- Oct 2001 – FinCEN was made part of the Treasury Bureau by the US Patriot Act.
- FinCEN is one of the US Treasury's primary agencies to oversee and implement policies to prevent and detect money laundering.
- FinCen works in partnership with the financial community to deter & detect money laundering.

FINCEN – CONTINUED

- FinCEN uses counter-money laundering laws, such as Bank Secrecy Act(BSA) to require reporting and recordkeeping by banks and other financial institutions. This record keeping preserves a financial trail for investigators to follow as they track criminals and their assets. The act also requires reporting of suspicious currency transactions which could trigger investigations
- Dec 12, 2016 US Treasury Department and IRS announced final regulations requiring domestic disregarded entities, US LLC's to identify their foreign owners and report certain related party transactions.

RISKS FOR PROFESSIONALS WHO RELOCATED CLIENTS AND UNDECLARED ASSETS TO THE USA

1. Mail and Wire Fraud 18 USC 1343 – a tax crime committed abroad using USA (phone system, bank system, legal system, electronic communication) results in such crime becoming a US crime as well with the full force of US law being applicable.
 - Pasquantino vs USA – Canadian Case – Pasquantino smuggled large quantities of liquor from USA into Canada to evade Canadian import duties. Did a plot to defraud a foreign government of tax revenue violate the federal wire fraud statute? – Courts ruled – Yes in a 5 -4 opinion. Pasquantino avoided Canadian tax ended up paying US tax + penalties on amounts concealed in USA(potential 20-30 yrs in prison)

ELEMENTS OF WIRE FRAUD 18 U.S.C. 1343

The elements of wire fraud under IRC sec 1343 directly parallel those of the mail fraud statute but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. Wire fraud statute is identical to mail fraud statute except that it speaks of communications transmitted by wire.

4 essential elements of the crime of Wire Fraud are:

1. The defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money.
2. The defendant did so with the intent to defraud
3. It was reasonably foreseeable that interstate wire communications would be used, and
4. That interstate wire/electronic communications were in fact used

WIRE FRAUD STATUTE -

1. Prohibits 'any' scheme to defraud that is executed through interstate wires. There is no exception to that categorical prohibition based on the identity of the victim or the nature of the money or property that is the object of the fraud. The language of the wire fraud statute therefore prohibits the use of interstate wires to execute a scheme to defraud a foreign government of tax revenue.
2. Common law revenue rule has no application to criminal prosecutions under the wire fraud statute. That common law principle prevents a foreign government or someone acting on its behalf from using the US courts to collect money due under the foreign government's tax laws. A prosecution under the wire fraud statute is NOT brought on behalf of the foreign government and it does not seek to enforce a claim to tax revenue. The prosecution neither satisfies nor eliminates any tax obligation the defendant may owe to a foreign government. Instead, such a prosecution is brought on behalf of the USA and its objective is to vindicate the USA's interest in preventing interstate wires from being used to execute a scheme to defraud.

WIRE FRAUD STATUTE -

A scheme to defraud a foreign government of tax revenue satisfies the wire fraud statute's 'money or property' requirement. Common Law fraud includes the deprivation of money or property that is legally due to the victim. Depriving a foreign government of money legally due under its laws falls squarely within that established common law understanding.

CAROLINE D CIRAULO – HEAD OF THE TAX DIVISION OF THE US DEPARTMENT OF JUSTICE

- US DOJ and Swiss Deferred Non Prosecution Agreement or Non-Target Letters for Swiss Banks signed August 29, 2013
- Between March 30, 2015 & Jan 27, 2016 the DOJ entered into 78 Non prosecution agreements with 80 Swiss banks, collection more than \$1.3 billion in penalties and a tremendous amount of information from participating banks.
- Since 2009 – 54,000 Voluntary Disclosures and 30,000 streamlined filing submissions and more than \$8 billion in tax, penalties and interest. And 200 criminal prosecutions
- 2008 – 350,000 FBARS filed and 1.1 million in 2015

US DEPARTMENT OF JUSTICE CONTINUED FOCUS ON OFFSHORE TAX EVASION

- Switzerland not the only country under investigation – which include BVI, Cayman Islands, Channel Islands, Guernsey, Hong Kong, Israel, Liechtenstein, Luxembourg, Panama and Singapore
- Individuals and entities who were identified by the Category 2 banks as having been engaged in culpable conduct, means they are also focusing on asset management companies, financial advisors, insurance companies and other entities that enable tax evasion.
- 95 institutions have entered into deferred prosecution agreements or non prosecution agreements and OVDP penalties have increased from 27.5% to 50%.

OECD GLOBAL FORUM ON TRANSPARENCY & EXCHANGE OF INFORMATION FOR TAX PURPOSE

Terms of Reference –

- A. Availability of Information
- B. Access of Information
- C. Exchange of Information
- D. Reviews take place in 2 Phases
 - Phase 1 – reviews examine the legal & regulatory frame work
 - Phase 2 – reviews look into the implementation of this framework in practice
- E. Past reviews concentrate on the availability of legal ownership and identity information of legal entities
- F. New Requirements strengthen the fight against anonymous shell companies and the use of legal arrangements to conceal ownership identity.

OECD GLOBAL FORUM ON TRANSPARENCY & EXCHANGE OF INFORMATION – USA REVIEW NOV 2016

USA – has undergone Phase 1 and 2 of Peer Review with a combined rating of Largely Compliant

1. Availability of Information – Largely compliant
 - Ownership, Accounting & Bank
2. Access to Information - Compliant
 - Access Powers
 - Rights & Safeguards
3. Exchange of Information - Compliant
 - Instruments
 - Network of Agreements
 - Confidentiality
 - Rights & Safeguards
 - Timely Exchange of Information

OECD GLOBAL FORUM ON TRANSPARENCY & EXCHANGE OF INFORMATION – SWISS REVIEW NOV 2016

Switzerland – has undergone Phase 1 and 2 of Peer Review with a combined rating of Largely Compliant

1. Availability of Information –
 - Ownership – Partially Compliant
 - Accounting and Bank - Compliant
2. Access to Information
 - Access Powers – Largely compliant
 - Rights & Safeguards – Largely compliant
3. Exchange of Information –
 - Exchange of Information Instruments – Largely Comp
 - Network of Agreements - Compliant
 - Confidentiality - Compliant
 - Rights & Safeguards – Partially Compliant
 - Timely Exchange of Information – Largely Compliant

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