

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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INTERNATIONAL TAXATION



► SUBJECT

UNITED STATES AND THE CAYMAN ISLANDS SIGN INTERGOVERNMENTAL AGREEMENT UNDER FATCA

► INTRODUCTION

On November 29, 2013, the United States Department of the Treasury released a Bilateral Agreement between the United States and the Cayman Islands ("Caymans") to implement the Foreign Account Tax Compliance Act ("FATCA"). This Intergovernmental Agreement ("IGA") provides that the Internal Revenue Service will receive tax information regarding United States account holders at foreign financial institutions ("FFIs") in the Caymans.

► DISCUSSION

FATCA was enacted in 2010 as part of the Hiring Incentives to Restore Employment Act ("HIRE Act") to identify non-compliance by United States taxpayers using foreign accounts. FATCA requires FFIs to report to the Service information about financial accounts held by United States taxpayers, or by foreign entities in which United States taxpayers hold a substantial ownership interest. In addition, the law requires United States financial institutions to withhold a portion of payments made to FFIs that do not agree to identify and report information on United States account holders.

Following the enactment of FATCA, Treasury published Model intergovernmental agreements to improve tax compliance and to implement FATCA. Foreign countries may negotiate and sign an intergovernmental agreement with the United States to allow resident FFIs separate reporting procedures. The FATCA-related obligations of an FFI which resides in a country that entered into a Model 1 intergovernmental agreement are primarily governed by the agreement rather than the regulations under sections 1471 through 1474.

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The Cayman Islands IGA is a Model 1B agreement. As such, FFIs in the Caymans must report tax information about United States account holders to the Cayman Islands Tax Information Authority (“CITIA”). The CITIA acts as the only agency in the Cayman Islands that will provide tax-related information to other governments.

Once a Caymans FFI reports tax information about United States account holders to the CITIA, the CITIA will provide that information to the Service. The Model 1B Agreement does not provide for reciprocity, so the Service will not provide tax information regarding accounts held by residents of the Caymans at United States financial institutions to the CITIA.

Additionally, the Caymans and the United States also signed a new Tax Information Exchange Agreement (“TIEA”), replacing the original agreement signed in 2001.

It is of utmost importance for affiliated groups of FFIs to understand the exact classification of each group member during the FATCA registration process. Inasmuch as many FFIs are organized under the laws of the Caymans, such FFIs will now be in a position to properly register with the Service.

The Caymans IGA may be accessed on the Treasury Web site at www.treasury.gov/resource-center/tax-policy/treaties/Documents/FINAL%20US%20-%20Cayman%20Islands%20-%20Cayman%20alternat.pdf.

HOW BDO CAN HELP

BDO supports its clients in the banking and financial services industry in all matters related to FATCA, including general consulting as well as compliance such as FFI registration, financial account due diligence, United States financial account reporting, and withholding obligations.

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