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By PwC Deutschland | 14 August 2012

Model treaty on information exchange

France, Germany, Italy, Spain, the UK and the USA have prepared a model bilateral treaty for the mutual exchange of information on bank accounts held by residents of the other country. Compliance with the treaty would absolve financial institutions from their own specific US reporting requirements under FATCA.

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The USA have recently enacted a Foreign Account Tax Compliance Act (FATCA) in a bid to improve tax information exchange by imposing reporting obligations on foreign banks in respect of accounts run by them for US tax residents. If the foreign bank fails to undertake to the IRS to comply with these requirements, its US source receipts will be subject to withholding tax not otherwise due. This raises a number of problems for foreign banks including possible conflicts with the law of their own country. Accordingly, France, Germany, Italy, Spain and the UK have established a joint working party to draft a model treaty between the USA and a foreign state for the mutual exchange of information, thus regulating procedures and protecting a local institute from inadvertent breaches of its own laws.

The model treaty provides for the annual exchange of information between the tax authorities of the two signatories on bank accounts held in the one country by residents of the other. The information shall clearly identify the account holder and state the total interest, dividend and other investment income. Both deposit and custodial accounts are included. This will release the institutes of the partner country from the withholding tax burden on their own income under FACTA. Recognised instances of non-compliant institutes are to be notified to the authorities of the home country for appropriate sanctions. The interests of efficiency are served by a provision allowing the authorities of one country to turn directly to an institute of the other in order to clear questions arising from administrative or clerical error. There is also provision to ease the reporting burden on institutes not actively soliciting business in the other market. On the other hand, there is a blanket requirement on signatory states to take all necessary steps to prevent institutes from circumventing their reporting requirements.

Keywords

FATCA, information exchange, withholding tax