

MEMO# 26257

June 22, 2012

United States Issues Joint Statements with Switzerland and with Japan Regarding FATCA Implementation

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TO: ICI GLOBAL TAX COMMITTEE No. 4-12 RE: UNITED STATES ISSUES JOINT STATEMENTS WITH SWITZERLAND AND WITH JAPAN REGARDING FATCA IMPLEMENTATION

The United States issued separate Joint Statements with Switzerland and Japan regarding the implementation of the Foreign Account Tax Compliance Act ("FATCA"). The Joint Statement with Switzerland discusses "a framework for cooperation to facilitate the implementation of FATCA." The Joint Statement with Japan discusses "a framework for intergovernmental cooperation to facilitate the implementation of FATCA and improve international tax compliance."

These Joint Statements follow one issued in February by the United States, France, Germany, Italy, Spain, and the United Kingdom. [\[1\]](#) These statements are designed to address legal impediments to FATCA compliance, to simplify practical implementation, and to reduce costs on financial institutions. Both the February Joint Statement and the Joint Statement between the U.S. and Japan discuss working with the Organization for Economic Cooperation and Development ("OECD") and others on adapting FATCA in the medium term to a common model for automatic exchange of information.

The Joint Statement Between the United States and Switzerland

The Joint Statement between the U.S. and Switzerland provides for an agreement pursuant to which, subject to certain terms and conditions, each country would undertake specified obligations. Switzerland would agree to:

- direct all Swiss financial institutions that are not otherwise exempt or deemed compliant pursuant to the agreement to conclude a foreign financial institution ("FFI") agreement with the IRS;
- grant an exception from Swiss law so that these Swiss financial institutions can

comply with their FATCA obligations (including reporting information about U.S. accounts to the IRS); and

- accept and honor promptly a “group request” from the U.S. for additional information regarding accounts identified as recalcitrant and reported by Swiss financial institutions on an aggregate basis.

The United States, in turn, would agree to:

- identify specific categories of Swiss FFIs or schemes (in particular certain small, local FFIs and Swiss pension-related institutions/schemes) that would be treated as deemed compliant or exempt;
- eliminate FATCA withholding tax on payments to Swiss financial institutions; and
- agree to certain other appropriate measures to reduce burdens and simplify FATCA implementation.

Finally, Swiss financial institutions would not be required to:

- terminate the account of a recalcitrant account holder; or
- impose foreign passthru payment withholding on payments to recalcitrant account holders, or to other financial institutions in Switzerland or in another jurisdiction with which the U.S. has in effect a FATCA implementation agreement.

The Joint Statement Between the United States and Japan

The Joint Statement between the U.S. and Japan provides an alternative framework for facilitating FATCA implementation. This framework also contemplates procedures for improving international tax compliance. Under the framework, Japan would agree to:

- direct and enable Japanese financial institutions that are not otherwise exempt or deemed compliant pursuant to the agreement to register with the IRS and confirm their intention to comply with Japanese Financial Service Agency (“FSA”) guidance that is consistent with FATCA’s obligations on participating FFIs to (among other things):
 - apply FATCA’s due diligence rules for identifying U.S. accounts;
 - report annually to the IRS specified information about U.S. accounts if consent is obtained from U.S. account holders; and
 - report annually to the IRS the aggregate number and value of accounts held by recalcitrant account holders; and
- accept and honor promptly a “group request” from the U.S. for additional information regarding accounts identified as recalcitrant and reported by Japanese financial institutions on an aggregate basis;

The United States, in turn, would agree to:

- eliminate the obligation of each FFI in Japan to enter into a separate comprehensive

FFI agreement with the IRS so long as the FFI is registered with the IRS or excepted from registration;

- identify specific categories of Japanese FFIs or schemes (including in particular certain Japanese pension funds) that would be treated as deemed compliant or exempt;
- eliminate FATCA withholding tax on payments to Japanese financial institutions that have entered into an FFI agreement with the IRS and conduct due diligence and reporting in a manner consistent with FATCA (or are treated as deemed compliant or exempt); and
- provide certain other measures to reduce burdens and simplify FATCA implementation.

Finally, Japanese financial institutions would not be required to:

- terminate the account of a recalcitrant account holder; or
- impose foreign passthru payment withholding on payments to recalcitrant account holders, or FFIs organized in Japan that have registered or entered into an FFI agreement with the IRS or are otherwise exempt or deemed compliant, or on FFIs organized in another jurisdiction with which the U.S. has in effect a FATCA implementation agreement.

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[Attachment](#)

endnotes

[1] The 8 February Joint Statement is discussed in the ICI Global memorandum summarizing the FATCA proposed regulations. See, http://www.ici.org/pdf/12_iciig_fatca_analysis.pdf.

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