France and the US sign bilateral agreement on the implementation of FATCA

20 November 2013

On 14 November 2013, French Minister of Economy and Finance Pierre Moscovici and US Ambassador to France Charles H. Rivkin signed a bilateral Intergovernmental Agreement (IGA) intended to implement the Foreign Account Tax Compliance Act (FATCA). FATCA was enacted by the US in 2010 to combat offshore tax evasion by US persons. France, with the United Kingdom, Germany, Spain and Italy, was an original member of the "G5" countries that agreed with the United States to advance the principles of FATCA under the concept of bilateral IGAs in order to address many of the legal barriers faced by financial institutions in complying with FATCA.

The French Government has committed to drafting local laws and regulations to implement FATCA among all financial institutions resident in France (including French branches of foreign companies). Broadly speaking, the banking, life insurance and asset management industries will be most affected but certain estate (patrimonial) vehicles, holding companies as well as hedging, finance and treasury centers of non-financial groups could also be impacted depending on the nature of their activities.

As expected, the US-France IGA is based on the Model 1A version with an Annex II negotiated to include provisions specific to the local French market and that contains categories of French financial institutions qualifying for exempt beneficial owner or deemed-complaint status.

Compliance with FATCA's due diligence, reporting and in some cases withholding requirements is necessary for foreign financial institutions to avoid suffering 30% withholding on certain US source income and payments. The French IGA is intended to simplify the FATCA requirements for French financial institutions, but in most cases still requires significant efforts to maintain compliance.

The following are key points specific to the US-France IGA to consider:

- Inclusion of the "most favored nation" clause allowing adoption of certain provisions from other IGAs that may be more favorable to French financial institutions.

- Consistent with Notice 2013-43, the timetable for implementation of FATCA has been synchronized with the intended amendments to the US Treasury Regulations, starting with the entry into force of key provisions effective 1 July 2014.

- Annex II of the French IGA describes various classes of exempt beneficial owners and deemed-compliant financial institutions.

  - The deemed-compliant financial institutions described in Annex II are treated as Non-Reporting French Financial Institutions under the French IGA. In turn, these Non-Reporting French Financial Institutions are considered certified deemed-compliant FFIs under the US regulations and do not have to register to obtain a GIIN.

  - Collective Investment Vehicles including investment entities established in France that are regulated as collective investment vehicles, "sociétés de crédit foncier" and "sociétés de financement de l'habitat" are Non-Reporting French Financial Institutions treated as deemed-compliant FFIs.

- The Asset management industry should benefit from an exemption related to employee savings plans and a special status that is intended to reduce the FATCA obligations of investment vehicles and management companies that can ensure the absence of US investors and non-participating financial institution customers.

- The agreement also provides specific provisions for certain French institutions and financial products, including:

  - Exemption for certain local banks with an almost exclusively local client base. This could be beneficial to French institutions following the mutual banking model.

  - Most regulated savings products (savings books and savings plans), which are excluded from the definition of a financial account and will not be treated as US Reportable Accounts whereas the PEA (share savings plan) remains within the scope of FATCA.

  - Products dedicated to retirement planning (Article 39, Article 82 , Article 83, Madelin, Madelin agricole, Perp, Pere and Prefon), which are excluded from the definition of financial accounts and will not be treated as US Reportable Accounts.

  - Pension funds will also benefit from a specific exemption.

The next step is for the French government to implement local laws adopting the provisions of the IGA. Given the rapidly approaching 1 July 2014 effective date, French financial institutions as well as non-financial organizations with financial institutions within their groups, should be taking steps based on the IGA (and in some cases US Treasury Regulations) to ensure they are prepared to comply.

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Click the link below to view PwC FATCA contacts in each country
http://www.pwc.com/us/en/financial-services/fatca-contacts.jhtml

For more information

- The press releases by the French and US governments can be accessed below
  - Statement by the the Minister of Economy and Finance of France
  - Press release by the US Treasury
- Additional FATCA information can be found on the US Treasury FATCA Resource Center.
- For additional thought leadership regarding FATCA guidance and implementation please see PwC's FATCA Publications archive.
- Access PwC's FATCA IGA Monitor web site that includes a high-level overview of signed IGAs and other IGA developments.

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